16-414

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~138.~~ 203

THE UNITED STATES, AND FRANCIS S. LYON, JAMES CRAWFORD, WILLIAM H. ROSS, JAMES D. BROWDER, JOHN COLLINS, BRYAN WHITFIELD, JAMES F. GRIFFIN, AMELIA GORGAS, AND WILLIE G. WINN, PLAINTIFFS IN ERROR,

vs.

THOMAS C. BROWN, GRAY HUCKABEE, CASWELL C. HUCKABEE, WASHINGTON M. SMITH, A. S. HUNTINGTON, FRANCIS H. HAWKS, AND ALEXANDER K. SHEPPARD.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA.

FILED NOVEMBER 29, 1871.

SUPREME COURT OF THE UNITED STATES.

No. 438.

THE UNITED STATES, AND FRANCIS S. LYON, JAMES CRAWFORD, WILLIAM H. ROSS, JAMES D. BROWDER, JOHN COLLINS, BRYAN WHITFIELD, JAMES F. GRIFFIN, AMELIA GORGAS, AND WILLIE G. WINN, PLAINTIFFS IN ERROR,

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THOMAS C. BROWN, GRAY HUCKABEE, CASWELL C. HUCKABEE, WASHINGTON M. SMITH, A. S. HUNTINGTON, FRANCIS H. HAWKS, AND ALEXANDER K. SHEPPARD.

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INDEX.

	Original.	Print.
Caption of term	1	1
Warrant of seizure	1	1
Original information	3	1
Answer of Thomas C. Brown et al. to original information	5	3
Answer of F. S. Lyon et al. to original information	9	4
Amended libel of information	14	7
Amended answer of F. S. Lyon et al. to amended libel	24	11
Motion on behalf C. C. Huckabee to dismiss amended libel	33	15
Answer of Thomas C. Brown et al. to amended libel	37	17
Bill of exceptions (caption)	43	19
Agreements of counsel as to facts	45	20
Deposition of T. J. McDaniel for plaintiff Lyon	48	22
Alexander E. Mott for plaintiff Lyon	54	25
John H. Robeson for Huckabee et al	68	31
Thomas B. Wetmore for plaintiff Lyon	80	36
Amended answer of C. C. Huckabee	103	45
Deed No. 1, executed by Bibb County Iron Co. to Confederate States	109	48
2, executed by C. C. Huckabee to Confederate States	117	51
3, executed by Thomas H. Alexander to Confederate States	120	53
4, executed by Thomas H. Alexander to Confederate States	123	54
5, executed by David Lindsey and wife to Confederate States	125	55

	Original.	Print.
Deed No. 6, executed by D. W. Prentice to Confederate States	129	56
7, executed by John and William Garner to Confederate States	131	58
8, executed by Pleasant M. Foucher to Confederate States	134	59
9, executed by David Lindsey to Confederate States	137	60
10, executed by John Bailey to Confederate States	139	62
11, executed by C. C. Huckabee to Confederate States	142	63
12, executed by E. W. Jarman to Confederate States	145	64
13, executed by Wager Swayne to F. S. Lyon et al	147	65
Order of President Andrew Johnson to General E. D. Townsend	153	68
Letter of Assistant Adjutant General E. D. Townsend to Hon. H. McCulloch.	154	68
Letter of Hon. Hugh McCullough to R. V. Montague, collector	155	69
Letter of J. Hubley Ashton, assistant attorney general, to James Q. Smith, district attorney	156	69
Testimony of C. C. Huckabee	157	70
Francis S. Lyon	177	78
James Q. Smith	185	81
Waiver of jury	187	82
Final decree	187	82
Prayer of appeal by United States and order granting same	196	85
Prayer for appeal by F. S. Lyon et al. and order granting same	197	85
Bond	198	86
Clerk's certificate	201	87
Prayer for appeal in behalf of United States	202	87
Prayer for appeal in behalf of F. S. Lyon et al	204	88
Writ of error	206	88
Citation	209	89
Certificate	211	90
Writ of error	213	90
Bond	215	91
Citation	218	92
Certificate	220	92

1 UNITED STATES OF AMERICA,
Middle District of Alabama, ss:

At a district court of the United States, begun and held for the middle district of Alabama, at Montgomery, on the fourth Monday of November, A. D. one thousand eight hundred and seventy, to wit, on the sixteenth day of January, 1871—present, the Honorable Richard Busteed, judge of said court—the following proceedings were had:

Warrant of seizure.

The President of the United States of America to the marshal of middle district of Alabama, greeting:

Whereas an information has been filed in the district court of the United States for the middle district of Alabama, on the first day of October, in the year 1865, by James Q. Smith, esq., attorney of the United States for said district, on behalf of the United States of America, against a certain tract of land, about three thousand six hundred acres, together with all improvements, ore, lime, and machinery, situate near Ashby depot, on the Alabama and Tennessee Railroad, in Bibb County, known as the Bibb County Iron Works and Rolling Mills, said to belong to the late so-called Confederate States government, for
2 reasons and causes in said information mentioned, and praying the usual process and monition of the court in that behalf to be made, and that all persons interested in said property may be cited in general and special to answer the premises, and all due proceedings being had, that the said property mentioned be condemned, and the proceeds thereof distributed according to law: You are, therefore, hereby commanded to attach said property, and to detain the same in your custody until the further order of the court respecting the same, and to give due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned as forfeited, and the proceeds thereof distributed, according to the prayer of said information, that they be and appear before the said court to be held in and for said district, on the fourth Monday in November next, at 10 o'clock in the forenoon of that day, if the same should be a day of jurisdiction; otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make these allegations in that behalf, and what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the Honorable Richard Busteed, judge of said court in the middle district of Alabama, the fourth Monday in May, in the year of our Lord one thousand eight hundred and sixty-five, and of our independence the eighty-ninth year.

[SEAL.] W. J. HARRIS, *Clerk.*

3 *Original information.*

District court of the United States of America for the middle district of Alabama.

To the judge of the district court of the United States for the middle district of Alabama:

James Q. Smith, esq., attorney of the United States for said district, who prosecutes for the United States, and an informer, exhibits this in-

formation against a certain tract of land containing about three thousand six hundred acres, together with all the improvements, ore, lime, and machinery, situate near Ashby depot, on the Alabama and Tennessee Railroad, in Bibb County, known as the Bibb County Iron Works and Rolling Mill, said to belong to the late so-called Confederate States government, in the district aforesaid, seized and now in custody of John Hardy, marshal of said district, under an order of seizure issued by the said attorney of the United States on the first day of October, 1865, and against all persons lawfully intervening for their interests therein. And thereupon the said attorney doth allege, articulately propound, and give the said judge to understand that, in and during the years 1863, 1864, and 1865, in the district aforesaid, on land, the said property was knowingly used and employed by the owners, and with the consent of the owners, of said property, in aiding, abetting, and promoting an insurrection and rebellion against the Government of the United States.

First. For that, heretofore, to wit, in and during the years aforesaid, and after the proclamation of the President of the United States,
4 referred to in the act of Congress, entitled "An act to confiscate property used for insurrectionary purposes," approved August 6th, 1861, the property hereinbefore described was knowingly used and employed in the district aforesaid, by the owners, and with the consent of the owners thereof, in aiding, abetting, and promoting said insurrection or resistance to the laws and authority of the United States.

Second. For that heretofore, to wit, in and during the years aforesaid, in the district aforesaid, after the passage of the act aforesaid and the publication of the proclamation aforesaid, the said property was knowingly used & employed by the owners, and with the consent of the owners thereof, in aiding, abetting, and promoting persons engaged in aiding, abetting, and promoting said rebellion and resistance to the laws and authority of the United States—in this, that, in and during the years aforesaid, said property was used, with the knowledge and consent of the owners thereof, as a place for the mining, manufacture of iron ore into all kinds of machinery and materials by persons engaged in armed rebellion and resistance to the laws and authority of the United States—said persons acting under contract and under direction of the late so-called Confederate States of America, then in rebellion against the United States, thereby aiding, abetting, and promoting said persons in their said rebellion and resistance to the laws and authority of the United States, contrary to the form of the statute of the United States in such case made and provided. The said attorney of the United States, on behalf of the United States, saith that all and singular the premises are true.

Wherefore he prays that process, in due form of law, may issue
5 against the said property to enforce the seizure, confiscation, and condemnation of the same, and requiring notice to be given to all persons concerned in interest to appear and show cause, on the return-day of said process, why such property should not be decreed.

JAMES Q. SMITH,
U. S. District Attorney, Mid. Dist. Ala.

Filed in office October 1, 1865.

W. J. HARRIS, *Clerk.*

Answer of Thomas C. Brown, on behalf of himself and others, to the original information.

THE UNITED STATES OF AMERICA
vs.
A CERTAIN TRACT OF LAND, CONTAINING about three thousand six hundred acres, together with all the improvements, ore, lime, and machinery, situate near Ashby depot, on the Alabama and Tennessee Railroad, in Bibb County, known as the Bibb County Iron Works and Rolling Mills, said to belong to the late so-called Confederate States government.

In the district court of the United States for the middle district of the State of Alabama, at Montgomery, May term, 1866.

Comes Thomas C. Brown, and makes claim to the said property mentioned and described above, and in the libel of information filed in said cause in said court, in behalf of himself and also in behalf of Gray Huckabee, Caswell C. Hucabee, Washington M. Smith, A. S. Huntington, Francis H. Hawks, and Alexander K. Sheppard; and the
6 said claimants do propound and allege as follows, to wit:

That the said parties above named as claimants are the true and legal owners of the said property described in the libel of information filed in said cause, in behalf of the United States of America, by James Q. Smith, esq., district attorney of the United States, and an informer against a certain tract of land, containing about three thousand six hundred acres, together with all the improvements, ore, lime, and machinery, situate near Ashby depot, on the Alabama and Tennessee Railroad, in Bibb County, known as the Bibb County Iron Works and Rolling Mills, said to belong to the late so-called Confederate States government, and that no other person is the owner thereof.

Second. It is not true, as the claimants are informed, and so state, that said property, in said libel of information mentioned, was ever seized by and taken in custody by John Hardy, marshal of said district, under an order of seizure issued on the 1st October, 1865, by the said attorney of the United States.

Third. That is not true, as alleged in said libel of information, that, in the years 1863, 1864, & 1865, on land, the said property was knowingly used and employed by the owners, or with the consent of the owners, of said property, in aiding, abetting, and promoting insurrection and rebellion against the Government of the United States as is in said libel of information stated, but, on the contrary thereof, said property
7 was built with the money and labor of the said respondents, and for their sole use, and was never voluntarily employed in aiding or abetting rebellion or insurrection against the Government of the United States.

Fourth. That it is not true, as is stated in the first article in said libel mentioned, that, in and during the years aforesaid, and after the proclamation of the President of the United States, referred to in the act of Congress, entitled "An act to confiscate property used for insurrectionary purposes," approved August 6th, 1861, the property hereinbefore described was knowingly used and employed in the district aforesaid, and by the owners, and with the consent of the owners, in aiding, abet-

ting, and promoting said insurrection and rebellion, or resistance to the laws and authority of the United States.

Fifth. It is not true, as alleged in the second article of said libel, that the said property was used knowingly, and employed by the owners, or with the consent of the owners thereof, in aiding, abetting, and promoting persons engaged in aiding, abetting, and promoting said rebellion and resistance to the laws and authority of the United States, or that said property was used with the knowledge and consent of the owners thereof as a place for the mining and manufacturing of iron ore into machinery and materials by persons engaged in armed rebellion and resistance to the laws and authority of the United States, or that said owners or persons so alleged to have been aided and abetted by them were acting under contracts with the Confederate States, so called, or under the direction of said Confederate States.

Sixth. And the said claimants further answer and allege that,
8 before the May term, 1866, of this court, *that* Thomas C. Brown and Francis H. Hawks were pardoned, and had received full amnesty from the President of the United States, under his proclamation of the 29th day of May, 1865, and the said claimants have taken the oath of allegiance and amnesty prescribed in said proclamation before an officer lawfully authorized to administer such oath; and they allege further that, before said date, the other claimants, viz, Gray Huckabee, C. C. Huckabee, Washington M. Smith, A. S. Huntington, Francis H. Hawks, and Alexander K. Sheppard received from his excellency Andrew Johnson, President of the United States, special pardon and full amnesty for all past offences connected with the late war of rebellion against the United States, and that each of them have fully complied with all the terms and conditions of said special pardons, so that the same have become complete and effectual; wherefore the said respondents claim that said property be restored to them.

JOHN T. MORGAN,
Proctor for Respondents.

District court of the United States, middle district of Alabama.

Comes Thomas C. Brown, one of the above-named claimants, and, being duly sworn, makes oath that the matters stated in the foregoing answer and claim are true, as he is informed and believes, and so states.

THOMAS C. BROWN.

Subscribed and sworn to before me this 30th day of May, 1866.
E. C. V. BLAKE, *Clerk.*

9 Filed May 30th, 1866.

E. C. V. BLAKE, *Clerk.*

* *Answer of Francis S. Lyon to the original information.*

UNITED STATES
vs.
3,600 ACRES OF LAND WITH THE IMPROVEMENTS, ore, lime, and machinery, situate near Ashby depot, on the Alabama & Tenn. R. R., in Bibb County, Ala., known as the Bibb Co. Iron Works and Rolling Mills.

Pending in the district court of the U. S. for the middle dist. of the State of Alabama.

This day comes Francis S. Lyon, and as well on his own behalf as on behalf of James Crawford, William H. Ross, James D. Browder, John Collins, Bryan W. Whitfield, James F. Griffin, Amelia Gorgas, and Willie G. Mima, who are jointly concerned in the ownership of the property proceeded against in *in* this case, with the said F. S. Lyon, and avers that the property proceeded against is jointly owned by the parties aforesaid, and belongs to them and to no other person or persons; and that no other person or persons have any interest therein; and these defendants being admitted to defend and make claim to said property, a claim-bond having been executed as required by the rules of the honorable court, do answer and articulately propound as follows, that is to say:

First. In answer to the first paragraph, these claimants say that
10 *the property in question*, at the commencement of the late war between the United States and the Confederate States, the property in question and controversy was owned by a corporation known as the Bibb County Iron Company, duly chartered by act of the legislature of Alabama, and organized under said charter, composed of the following stockholders, to wit: Caswell C. Huckabee, Alexander K. Sheppard, Gray Huckabee, Washington M. Smith, and Alfred M. Huntington, and on the 19th day of September, 1863, the said corporation, and parties composing the same, sold the said property of all kinds whatsoever belonging to said company, except the pig metal then on hand, to the Confederate States of America, for the sum of six hundred thousand dollars, and then and there received the payment in full for the same, and executed to the said late Confederate States government a title deed with full covenants of warrant*ee*, and put the said Confederate States in the full possession of said property, with all the appurtenances and appliances pertaining to said iron-works and rolling-mill; all which will more fully appear by reference to a copy of the deed of conveyance, which these claimants aver was executed to the said Confederate States by the said corporation and stockholders, a true copy of which is hereto attached, marked Exhibit A, and the same is prayed to be deemed and taken as a part of this answer, with leave to refer thereto as often as need be. And these claimants aver that the said grant*ees* in said deed were fully advised of the objects and purposes for which the
11 said Confederate States of America purchased said property, which was to furnish said Confederate States iron for the purpose of making arms & munitions of war to aid in carrying on the rebellion against the Government of the United States; and the said grantors then and there put the said Confederate States of America in full possession of said property, and the said Confederate States held, used, occupied, and enjoyed said property as undisputed owner thereof, until in the day of March, 1865, when General Wilson, with his armed force of Federal soldiers came through the State of Alabama, and captured said lands and property, and claimed the same as property captured by the United States. So that these claimants admit that said property was used during the years specified in said information for rebellious purposes, and the same was a very efficient means of furnishing iron for arms and munitions of war, such as cannon balls and shells for the purpose of carrying on said rebellion.

Second. And these claimants admit the allegations in the second articles of the said information to be true, as therein stated; and they

aver that at the time of said sale by the grantors in said deed, they well knew the object to which the Confederate States designed to appropriate said property, to wit, the object hereinabove expressed of aiding the rebellion by producing iron for the manufacture of arms and munitions of war, and that said Confederate States did so employ said
12 property, and did furnish iron for making arms and cannon balls and shell and cannon, which were used in said rebellion against the United States and the laws and authority thereof, from the 17th September, 1863, to March, 1865, when said property was captured by the United States. And these claimants aver that said property being so captured by the United States, and in the possession of the same, under and by virtue of the laws of the United States, and in accordance therewith, were put up and sold at public auction on the 9th day of January, 1866, after having been duly advertised for thirty days, by General Wager Swayne, assistant commissioner of the Bureau of Refugees, Freedmen and Abandoned Lands in the State of Alabama, duly and lawfully authorized, and fully empowered to sell and convey said property in manner aforesaid, and one of these claimants, Francis S. Lyon, in behalf of himself and the other claimants, became the purchaser thereof, at the sum of forty-five thousand dollars, that being the highest and best bid made for the same, and the said property was then and there sold and conveyed by the said Wager Swayne, commissioner aforesaid, under due and ample authority from the President of the United States, and the Secretary of the Treasury of the United States, which deed of conveyance will be produced and proved on the trial of this cause, as also the authority given to General Swayne to sell and convey the same.

And so these claimants aver that said premises and all the prop-
13 erty specified in said information, belong bona fide to them, and no other person or persons have any interest therein, and they hereby claim the same and pray this honorable court that the same may be decreed to them under their purchase aforesaid. They further aver that since their said purchase of said property and payment to the United States therefor, of the sum of forty-five thousand dollars, they have made many and valuable improvements thereon, amounting in value to the sum of about $, and that no one has intervened, save in this court, to notify them of any claim to such property. And they aver that the claim set up in opposition to theirs *is* by persons alleging themselves to be owners thereof, is without foundation in law or justice; that said claim involves a repudiation of the act of sale made by the said claimants to the late Confederate States government, with a knowledge of the object and purposes for which it was designed, and ignores the use of such property in furnishing said confederates the most efficient aid in carrying on the war against the United States, and the seizure and capture of such property while so being used by the military forces of the United States, and that the same has been held by the United States as captured property, having had a special agent in charge thereof since August, 1865. And so these claimants aver that the original proprietors who sold said property to the late so-called Confederate States, have not any claim to said property, founded in right or justice; and that the assertion of such claim on their part
14 is, as claimants are advised and believe, and so states, a violation of one of the conditions specified in the pardons granted to them respectively, if any such have been granted.

And so these claimants aver that no decree can or ought to be made

in favor of the said Brown, Huckabee, and others, who have heretofore interposed their claim.

All which the premises and averments above stated are true.

F. S. LYON.

Sworn and subscribed before me this 26th November, 1866.

E. C. V. BLAKE,
Clerk Dist. Court U. S. Mid. Dist. Ala.

Amended libel of information.

District court of the United States of America for the middle district of Alabama.

To the honorable the judge of the district court for the said middle district:

Francis Bugbee, esq., attorney of the United States for said district, who prosecutes for the United States, exhibits this amended information, by leave of the court now here first had and obtained, against a certain tract of land containing about seven thousand four hundred and twenty acres, together with all the improvements, ore, lime, and machinery, situate near Ashby depot, on the Alabama and Tennessee Rivers Railroad, in Bibb County, in the district aforesaid, known as the Bibb County Iron Works and Rolling Mills, captured by the armed forces of the United States from the late so-called Confederate States of America, during the late insurrection against the Government of the United
15 States, composing the said so-called Confederate States, which said property was turned over by the said captors to, and seized by, the marshal of this court, under an order of seizure issued on behalf of the United States, on the first day of October, 1865, and against all persons lawfully intervening for their interest therein.

The said property consists of the following real estate, described and known as the southeast quarter of the southeast quarter of section twenty-one; the south half of the southwest quarter of section twenty-two; the southeast quarter of the southwest quarter of section twenty-three; the southeast quarter, the south half of the northeast quarter, the southeast quarter of the northwest quarter, and the northeast quarter of the southwest quarter of section twenty-eight; all of section twenty-seven, except the northwest quarter of the northeast quarter of said section; all of section twenty-six, except the northeast quarter thereof; the south half of the southeast quarter, and the southwest quarter of the northwest quarter of section twenty-five; the north half of the northeast quarter of section thirty-three; the north half of section thirty-four; the northwest quarter of section thirty-five, except the southwest quarter of said northwest quarter, and the west half of the northeast quarter of said section thirty-five; also so much of the east half of the northeast quarter of section thirty-five, and of the west half of northwest quarter of section thirty-six as lies north of the new road running from Ashby depot to the furnaces of Bibb County Iron Company—all in township twenty-four and range eleven, east. Also, a piece of land in the southeast part of the southwest quarter of section nineteen, township twenty-four, range twelve east, bounded as follows: Beginning at the
16 southeast corner of said west half, running thence west on the section line fifty-seven poles to a stake; thence north fifty-seven poles to a stake; thence east fifty-seven poles to the east line of said

tract; thence south on said line to the beginning, making a square block of twenty acres more or less.

Also the tract or piece of land described as follows: Commencing at the half section stake of the south boundary line of section nineteen, in township twenty-four, of range twelve east, running east on said boundary line seventy yards; thence north to the middle of Mahone's Creek; thence down said creek to the dividing line between the eastern and western halves of the section; thence south on said line to the beginning, containing in all two thousand five hundred and twenty acres, more or less. Also the following-described lands, to wit: The northeast quarter of section twenty-one, the northwest quarter of the southeast quarter of the same section, and the southeast quarter of the southwest quarter of the same section, the north half of section twenty-two, the southeast quarter of the same section, and the northeast quarter of the southwest quarter of the same section; also the southwest quarter of the southwest quarter of section twenty-three; also so much of the south half of the southwest quarter of section twenty-eight as lies south of the road from Tuscaloosa to Montevallo; also the northwest quarter of section thirty-three, and the northwest quarter of the northeast quarter of the same section, in township twenty-four, of range eleven east; also the northeast quarter, except the northwest quarter of said northeast quarter, of section five, and the south half of the northwest quarter
17 of said section five, and the northeast quarter of the southwest quarter of said section five, in township twenty-three, range eleven east, containing thirteen hundred and forty acres, more or less. Also the following-described lands, claimed to have been purchased by and conveyed to the late Confederate States, and in their possession and use at the time of the capture aforesaid, to wit: The southeast quarter of section twenty-four, and the southwest quarter of the same section, except the northeast quarter of said southwest quarter of said section twenty-four; also so much of section twenty-three as lies south of the tram-road, the east half of section twenty-five, except the south half of the southeast quarter of section twenty-five, which is included in a deed of the Bibb County Iron Company; also the northeast quarter of section twenty-six, the southwest quarter of the northwest quarter of section twenty-eight, and the northwest quarter of the southwest quarter of section twenty-eight, the south half of section thirty-three, except the northwest quarter of the southwest quarter thereof, and the southeast quarter of the northeast quarter of said section thirty-three, and the southeast quarter of section thirty-four, except the northeast quarter thereof, the southwest quarter of the southwest quarter of section thirty-five; also the west half of the southeast quarter of section thirty-six—all in township twenty-four, range eleven east; also the southwest quarter of the southwest quarter of section nineteen, the northwest quarter of the northwest quarter of section thirty—all in township twenty-four, of range twelve east; also the northeast quarter of
18 section four; also section three; also section two, except the southwest quarter and the west half of the southeast quarter of the northwest quarter of said section; also, excepting the northeast quarter of the northeast quarter of said section; also the northeast quarter, and the east half of the southeast quarter of section ten; also the north half of section eleven, and the north half of the south half of section eleven, and the southwest quarter of the southwest quarter of section eleven; also the northwest quarter of the southwest quarter of section twelve, in township twenty-three, range eleven east—containing three thousand five hundred and sixty acres, more or

less. The said lands, including and embracing the Brierfield Rolling Mills and the Bibb County Iron Works, and being the same property captured by the forces of the United States during the late war between the United States and the so-called Confederate States, it being herein intended to embrace and describe all the property, estate, and effects of the said Brierfield Rolling Mill and the Bibb County Iron Works.

And thereupon the said district attorney, in the name and on behalf of the United States of America, doth allege, articulately propound, and give the court to understand, that during the years 1863–'4, and down to the period of its capture as aforesaid by the military forces of the United States of America in 1865, in the district aforesaid, the said property was knowingly used and employed by the owner or owners thereof in aiding, abetting, and promoting an insurrection and rebellion against the Government of the United States, in this, to wit:

19 First. For that heretofore, to wit, in and during the years aforesaid, and after the proclamation of the President of the United States, referred to in the act of Congress, entitled "An act to confiscate property used for insurrectionary purposes," approved August 6th, 1861, was made and duly promulgated by the President, the property hereinbefore described was knowingly used and employed in the district aforesaid by the owner or owners, and with the consent of the owner or owners thereof, in aiding, abetting, and prom*ulga*ting said insurrection or resistance to the laws of the United States.

Second. For that heretofore, to wit, in and during the years aforesaid, and in the district aforesaid, after the passage of the act aforesaid, and the publication of the proclamation of the President of the United States as aforesaid, the said property was used and employed by the owners, and with the consent of the owners thereof, in aiding, abetting, and prom*ulga*ting persons engaged in aiding, abetting, and promoting said insurrection and rebellion to the laws and authority of the United States, in this, that, in and during the years aforesaid, said property was used, with the knowledge and consent of the owners thereof, as a means of manufacturing for the late so-called Confederate States, shot, shell, and munitions of war, and a place for the manufacture and mining of iron ore into all kinds of machinery to be used by persons engaged in armed rebellion and resistance to the laws and authority of the United States and persons acting as agents and officers of the government of the late so-called Confederate States, and the said lands were so used by the knowledge and consent of all persons concerned therein as claimants.

Third. For that heretofore, to wit, in and during the years
20 aforesaid, in the district aforesaid, and after the proclamation of the President of the United States had been duly made and promulgated as the same is mentioned and referred to in said last-named act, being entitled "An act to confiscate property used for insurrectionary purposes," approved August 6th, 1861, the said property hereinbefore described was knowingly used and employed by persons acting for and on behalf of the late so-called Confederate States of America, with the consent of the owners thereof, in aiding, abetting, and promoting an armed insurrection and rebellion against the United States of America and resistance to the laws and authority of the said United States, in this, that the same was used for an iron-works in digging and smelting iron ore and casting and providing implements of warfare to be used by persons engaged in armed rebellion and resistance to the laws and authority of the United States, contrary to the forms of the statute in such cases made and provided.

Fourth. And also for this, to wit, that heretofore, in and during the years aforesaid, and after the passage of the act of Congress aforesaid, and after the promulgation of the proclamation aforesaid by the President of the United States aforesaid, referred to in said act of Congress, entitled "An act to confiscate property used for insurrectionary purposes," approved August 6th, 1861, the said lands above described, and which are known as the lands belonging to and comprising the
21 "Bibb County Iron Works," sometimes called the "Brierfield Rolling Mills and Bibb County Iron Works," were, to wit, on the 17th day of September, A. D. 1863, and at other times in the year 1863-'4, purchased and acquired by the late so-called Confederate States of America, from the owners thereof, for the purpose and with the intent of using and employing the same in aiding, abetting, and promoting an insurrection theretofore made and then being carried on by the said so-called Confederate States of America, against the Government and authority of the United States of America and in resistance to the laws thereof. And the said late so-called Confederate States, by virtue of deeds of conveyance executed by the original owners of said lands in the years 1863 and 1864, held said lands under color of title, and became the owner thereof, and so being the owner of said lands and rolling-mill and iron-works, did from thence, at and until the day of April, 1865, knowingly use and employ the same in aiding, abetting, and promoting said insurrection, by using the same in the manufacture of arms and munitions of war, to enable the said so-called Confederate States to carry on said insurrection and resistance to the laws and authority of the United States; and which said lands, and the said rolling-mill and iron-works thereupon situate, while thus owned and used by the said late so-called Con-
22 federate States, were, on the day and year last aforesaid, to wit, the day of April, 1865, captured by the military forces of the United States of America, in the district aforesaid; and the same being so captured by the military forces of the United States from the said so-called Confederate States, the same have been seized by the order of the President of the United States and turned over to the jurisdiction of this honorable court, to be confiscated and condemned, according to the statute of the United States in such case made and provided; and the said district attorney, prosecuting for the United States as aforesaid, further gives the court now here to know and be informed that said lands were, by the order of the President of the United States and the Secretary of the Treasury of the United States, on the 9th day of January, 1866, sold to the highest bidder, as property belonging to the United States and captured as aforesaid from the late so-called Confederate States, and purchased by one Francis S. Lyon, for himself and his associates, at the price of forty-five thousand dollars, which price was then and there paid to the United States of America, and the agent who made said sale on behalf of the United States, under the authority aforesaid, to wit, Wager Swayne, the assistant commissioner of Refugees, Freedmen, and Abandoned Lands, executed to said Lyon a deed of conveyance on the third day of February, 1866, for the interest which the United
23 States had in said property; and said attorney further avers and makes known that said sale and conveyance being deemed by the United States informal, the Congress of the United States of America, on the 15th day of December, 1866, and since the libel of information in this case was filed, approved and confirmed the said purchase of said Lyon, and the said conveyance made to him, by

an act passed and approved of the date last aforesaid, entitled "An act releasing to Francis S. Lyon the interest of the United States in certain lands," and which act is as follows:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That any interest which the United States have in the lands described in a deed executed by Wager Swayne, assistant commissioner of the Bureau of , Freedmen, and Abandoned Lands, to Francis S. Lyon, bearing date February 3d, 1866, be, and the same is hereby, released and confirmed to the said Lyon."

And the said land, and rolling-mill and iron-works thereupon situate, having been so owned and employed by the said so-called Confederate States, and captured and seized as aforesaid, and now within the jurisdiction of this court, is, under the statutes aforesaid, liable to condemnation in confirmation of the title of said Francis S. Lyons and his associates.

The said attorney of the United States, on behalf of the United States, saith that all and singular the premises are true.

Wherefore he prays that due process of law may issue against the said property to enforce the seizure and condemnation of the
24 same, and requiring notice to be given to all persons concerned in interest to appear and show cause, on the return day of said process, why such property should not be decreed to be condemned as property captured during said insurrection, and the right and title thereof vested by the decree of this honorable court in Francis S. Lyon, in accordance with the special act of Congress, in his favor, for the use of himself and his associates.

F. BUGBEE,
District Attorney for the U. S. for Mid. Dist. of Alabama.

Filed in office July 31st, 1866.

E. C. V. BLAKE, *Clerk, &c.*

Amended answer of Francis S. Lyon et al., to amended libel of information.

THE UNITED STATES OF AMERICA
vs.
THE BIBB COUNTY IRON WORKS AND ROLLING MILLS, F. S. Lyon, claimant, for himself and others.

Francis S. Lyon, himself, and his associates, comes and, by leave of the court, files this amendment and supplemental answer to the answer heretofore filed by him, and thereupon he doth aver and propound as follows:

First. That the said land and property in the said libel set forth was, pending the late insurrection or rebellion against the Government of the United States by the late so-called Confederate States, and
25 while the said rebellion was being carried on by the late so-called Confederate States, captured by the military forces under the command of General Wilson, then commanding said forces for and on behalf of the United States, from the so-called Confederate States of America, the same then and there, at the time of said capture, being in the possession of the late so-called Confederate States, and employed in the manufacture of iron into munitions of war for the purpose of carrying on said rebellion and resistance to the laws and authority of the Government of the United States, and the same was, to wit, on the

day of August, 1865, taken into possession of the United States under the laws of the same, providing for the collection of abandoned and captured property, and the said property, together with other property connected with and forming a part of said iron-works and rolling-mill establishment, but which is not mentioned in said information, was, by the authority of the United States and the Secretary of the Treasury, advertised for sale at public auction for the space of thirty days, and on the 9th day of January, 1866, the same was sold by Wager Swayne, who then was the assistant commissioner of the Bureau of Refugees, Freedmen and Abandoned Lands, in the State of Alabama, where said property is situated, and at said sale, duly made under the authority of the President of the United States, and the Secretary of the Treasury of the United States, in accordance with the laws of the United States, the same property was bid off by the said Francis S. Lyon, at and for the sum of forty-five thousand dollars, (45,000,) that being the highest and best therefor.

26 And thereupon the said Wager Swayne, as said assistant commissioner, on the third day of February, 1866, executed as such assistant commissioner, a deed of conveyance, a true copy of which said deed is substantially as follows:

"To all whom these presents may come:

"Whereas the property hereinafter described, during the rebellion of the so-called Confederate States of America, was held, used, employed by the officers and agents of the so-called Confederate States of America, under a deed of bargain and sale of the Bibb County Iron Company, bearing date the 17th day of September, 1863, to the said Confederate States of America, in aiding and promoting the said rebellion, with the knowledge and consent of the said corporation; and whereas on the day of August last, the said property was taken into possession of the United States, under the laws of the same for the collection of abandoned and captured property; and whereas, by the authority of the President of the United States and the Secretary of the Treasury, the said property was advertised for sale at public auction for the space of thirty days, and under the acts of Congress aforesaid, at Brierfield Rolling Mill and Bibb County Iron Works, in the county of Bibb, in the State of Alabama, on the 9th day of January, 1866, by the undersigned, Wager Swayne, assistant commissioner of the Bureau of Refugees, Freedmen and Abandoned Lands, in the State of Alabama, under authority of the President and Secretary of the Treasury aforesaid; and whereas, at the said sale at public auction as aforesaid,

27 and according to the authority and notice aforesaid, Francis S. Lyon, for himself and others, became the purchaser of the property hereafter mentioned, for the sum of forty-five thousand dollars, that being the highest sum bid therefor, to wit, lands described in and conveyed by deeds to the late so-called Confederate States, and recorded in Bibb County:

"The southeast quarter of the southeast quarter of section twenty-one; the south half of the southwest quarter of section twenty-two; the southeast quarter of the southwest quarter of section twenty-three; the southeast quarter, the south half of the northeast quarter, the southeast quarter of the northwest quarter, and the northeast quarter of the southwest quarter of section twenty-eight; all of section twenty-seven, except the northwest quarter of the northeast quarter of said section; all of section twenty-six, except the northeast quarter thereof; the southwest quarter, the south half of the southeast quarter, and

the southwest quarter of the northwest quarter of section twenty-five; the north half of the northeast quarter of section thirty-three; the north half of section thirty-four, the northwest quarter of section thirty-five, except the southwest quarter of said northwest quarter, and the west half of the northeast quarter of said section thirty-five. Also, so much of the east half of the northeast quarter of section thirty-five, and of the west half of the northwest quarter of section thirty-six, as lies north of the new road running from Ashby depot to the fur-
28 naces of the Bibb County Iron Company—all in township twenty-four, range eleven east. Also, a piece of land in the southeast part of the southwest quarter of section nineteen, township twenty-four, range twelve east, bounded as follows: Beginning at the southeast corner of said west half, running thence west on the section line fifty-seven poles to a stake; thence north fifty-seven poles to a stake; *thence east fifty-seven poles to a stake;* thence east fifty-seven poles to the east line of said tract; thence south on said line to the beginning, making a square block of twenty acres, more or less. Also the tract or piece of land, described as follows: Commencing at the half-section stake of the south boundary line of section nineteen, in township twenty-four, range twelve east, running east on said boundary line seventy yards; thence north to the middle of Mahone's Creek; thence down said creek to the division line between the eastern and western halves of the section; thence south on said line to the beginning—containing, in all, two thousand five hundred and twenty acres, more or less.

"Also the following-described lands, conveyed by sundry persons to the late government of the Confederate States by deeds recorded in said county of Bibb, to wit:

"The northeast quarter of section twenty-one; the northwest quarter of the southeast quarter of the same section; and the southeast quarter of the southwest quarter of the same section; the north half of section twenty-two; the southeast quarter of the same section, and
29 the northeast quarter of the southwest quarter of the same section; also, the southwest quarter of the southwest quarter of section twenty-three; also, so much of the south half of the southwest quarter of section twenty-eight as lies south of the road from Tuscaloosa to Montevallo; also the northwest quarter of section thirty-three, and the southwest quarter of the northeast quarter of the same section thirty-three, in township twenty-four, of range eleven east; also, the northeast quarter, except the northwest quarter of said northeast quarter, of section five, and the south half of the northwest quarter of said *said* section five, and the northeast quarter of the southwest of said section five, in township twenty-three, range eleven east—containing thirteen hundred and forty acres, more or less.

"Also the following-described lands, claimed to have been purchased by and conveyed to the late Confederate States, and in their possession and use, but no deeds found of record, to wit:

"The southeast quarter of section twenty-four and the southwest quarter of the same section, except the northwest quarter of the said southwest of said section twenty-four; also so much of section twenty-three as lies south of the tram-road; the east half of section twenty-five, except the south half of the southeast quarter of section twenty-five, which is included in the deed of the Bibb Iron Company; also the northeast quarter of section twenty-six; the southwest quarter of the northwest quarter of section twenty-eight; the south half of section thirty-three, except the northwest quarter of the southwest thereof; and the southeast quarter of the northeast quarter of said section

30 thirty-three; the southeast quarter of section thirty-four, except the northeast quarter of said section thirty four; the southwest quarter of the southwest quarter of section thirty-five; also the west half of the southeast quarter of section thirty-six, in township twenty-four, range eleven east; also the southwest quarter of the southwest quarter of section nineteen; the northwest quarter of the northwest quarter of section thirty, in township twenty-four, of range twelve east; also the northeast quarter of section four; also section three; also section two, except the southwest quarter of the northwest quarter of said section, and also excepting the northeast quarter of the northeast quarter said section; the northeast quarter and the east half of the southeast quarter of section ten; also the north half of section eleven, and the north half of the south half of section eleven, and the southwest quarter of the southwest quarter of section eleven; also the north quarter of the southwest quarter of section twelve in township twenty-three of range eleven east—containing three thousand five hundred and sixty acres, more or less. The said lands including and embracing the Briarfield Rolling Mill and Bibb County Iron Works, it being intended herein to describe all the property, estate, and effects of the said Briarfield Rolling Mill and Bibb County Iron Works, owned, claimed, and in possession of the officers and agents of the late Confederate States, and used *used* for the purposes stated, as included in the purchase of the said Francis S. Lyon, and intended hereby to be conveyed to him, together with all the improvements thereon, including the
31 machinery, fixtures, buildings, materials, coke, coal, wood, ore, limestone, wrought-iron, wrought and cast scrap-iron, muck bar, blooms, and every other article of property appertaining to or belonging to the Brierfield Rolling Mills and Bibb County Iron Works, with the exception of the pig-iron on hand and ready for market.

"Now, in consideration of the premises, and of the sum of forty-five thousand dollars of lawful money of the United States, in hand paid by the said Lyon, the receipt of which I hereby acknowledge, I, the said Wager Swayne, assistant commissioner, as aforesaid, do hereby sell and convey to the said Lyon and to his heirs and assigns forever the property, real and personal, hereinbefore mentioned and described.

"This conveyance, however, is only of such right, title, and interest as the United States has in and to said property, the title not being intended to be warranted.

"Witness my hand and seal this 3d day of February, 1866—this deed being executed in duplicate.

(Signed) "WAGER SWAYNE, [L. S.]
"*Assistant Commissioner.*

"The words 'on the 9th January, 1866,' the words 'township,' and the words 'also so much of section twenty-three as lies south of the tram-road,' interlined before signing.

"Witness: CHAS. J. DUVAL,
"EDWARD WRIGHT."

32 And these claimants aver and answer that the said sum o forty-five thousand dollars was paid by the said Francis S. Lyon to the agent of the United States of America duly authorized to receive the same, and that the United States has received the said sum so paid and hold the same, and the said property was then and there delivered to these respondents as their property by the United States, and they have held the same ever since, and now hold the same.

Second. And these claimants doth further answer and say that since the making and delivery of said deed of conveyance by the said Wager Swayne, as the said assistant commissioner as aforesaid, the United States of America have by an act of Congress, passed the 15th day of December, 1866, approved and confirmed the said purchase of said Lyon, and the conveyance made to him, which act is in these words:

"An act releasing to Francis S. Lyon the interest of the United States in certain lands.

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That any interest which the United States have in the lands described in a deed executed by Wager Swayne, assistant commissioner of the Bureau of Freedmen and Abandoned Lands in the State of Alabama, to Francis S. Lyon, bearing date February third, eighteen hundred and sixty-six, be and the same is hereby, released and confirmed to the said Lyon.

"Approved December 15, 1866."

And so these respondents aver that the United States have transferred by said deed, and by said act of the Congress of the United
33 States aforesaid, the right and interest of the United States to the said Lyon as provided in said deed, and these respondents insist that no judgment of condemnation except for the purpose of further assurance and confirmation of the title of these respondents under said deed of the United States ought or can be made by this court.

Third. And these respondents aver, answer, and propound that the said lands, and iron-works and rolling-mill situate thereon were used by the late so-called Confederate States, as stated in the libel of information, not only by the consent of the owners of said lands, but the owners actually conveyed the same during the said late rebellion to the said Confederate States with a full knowledge of the objects and intentions on the part of the said late so-called confederate authorities, that the same were to be appropriated to the purposes of aiding, abetting, and promoting said rebellion, and they received therefor from said Confederate States a large sum of money, to-wit, the sum of six hundred thousand dollars. All which these respondents aver are true. Wherefore they pray that said property may be decreed to them in further confirmation of their title.

F. S. LYON.

CHILTON, THORINGTON AND BROOKS,
Proctors for Respondents.

Sworn to this 30th May, 1867.

E. C. V. BLAKE, *Clerk.*

Motion on behalf of C. C. Huckabee et al. to dismiss amended libel of information.

34 In the district court of the United States, middle district of Alabama, at Montgomery.

THE UNITED STATES OF AMERICA
vs.
A CERTAIN TRACT OF LAND CONTAINING about three thousand six hundred acres, together with improvements &c.

In this case motion is made at the instance of Thomas C. Brown and

others, claimants, to dismiss the libel of information for the following causes:

1. That it is apparent from the libel and amended libel of information, and the warrant of seizure issued in said cause and the returns of the marshal of the United States thereon, that the court never had jurisdiction thereof, and that the same ought to be dismissed.

2. Because it is apparent from said proceedings that there was no capture of property in said amended libel described before the same was filed.

3. Because the libel of information, as amended, shows upon its face that the confiscation and condemnation of the property in said libel and amended libel mentioned is demanded at the instance and for the benefit of private persons, and not for the benefit in any sense of the Government of the United States of America, and that the process in the name of the United States is used in said cause without authority of law and to cover and protect a title which, if it be valid, enures only to private persons.

35 4. Because it appears from the matters stated in said *amended* libel and amended libel that the Government of the United States has no right or interest in said proceeding, or in the property sought to be condemned and confiscated therein, or in the proceeds thereof, or in the alleged forfeiture which is the basis in law of said proceedings, but all its right and interest therein, and all its right to claim the forfeiture thereof and to proceed to condemn and confiscate the same has been waived and released by the Government of the United States, as appears of record on the face of said proceeding.

5. Because it appears from the matters set forth in said amended libel of information that all the right of confiscation and condemnation, as well as the right of seizure, which, upon the facts set forth in said proceedings occurred to or were conferred by law on the Government of the United States have ceased by the force and effect of the act of Congress in said proceedings mentioned; approved 15th day of December, 1866.

6. Because it appears from matters set forth in said amended libel that whatever seizure, capture, or arrest, or attachment that has ever been made of the property therein mentioned at the instance of the United States of America, or any officer or agent thereof, on which said proceedings were instituted, has been abandoned and released by the United States of America.

36 7. Because the original libel of information in this cause was filed on the information of an informer, and by the amendment to said proceeding and the substitution thereby of other private persons as the promotents and beneficiaries of said proceeding, using the name of the United States in that behalf, the rights of said informer are stricken down and destroyed, contrary to the Constitution of the United States.

8. Because whatever may have been the character*ter* and purpose of the original libel, the proceedings, as amended, discloses the fact that this cause is no longer prosecuted in favor of the United States, and that it has become a suit of private individuals to cover and protect an asserted or supposed title to the lands and property in said proceedings mentioned, and is now being conducted without authority of law or precedent or any sanction in the rules and practice of this honorable court.

9. Because new parties have been admitted as the real libellants in this cause who were originally admitted to the record as claimants,

setting up title under oath in hostility to the averments, statements, and prayer of the original libel of information; and also that no cause of forfeiture, confiscation, or condemnation of the property in said libel mentioned has accrued, or would lawfully accrue to said persons, either in their own right or by any right or title that has been conferred or could be conferred on them by the act of Congress set out in said amended libel; approved *approved* the 15th of December, 1866.

37 Wherefore the said Thomas C. Brown and C. C. Huckabee, Gray Huckabee, A. S. Huntington, Frank Hawks, A. K. Sheppard, and Washington M. Smith, claimants, pray that the amended libel be dismissed out of this court.

JOHN T. MORGAN,
Of Counsel and Attorney and Proctor for the Claimants.

Service of copy of this notice acknowledged, May 26th, 1868.
CHILTON, THORINGTON AND BROOK,
Attorneys for United States and Lyon.

Answer of Thomas C. Brown, et al. to amended libel of information.

THE UNITED STATES OF AMERICA
vs.
THREE THOUSAND SIX HUNDRED AND NINETY Acres of Land and machinery, called the Brierfield Iron Works.

The answer of Thomas C. Brown, Gray Huckabee, Frank Hawks, Caswell C. Huckabee, A. S. Huntington, and Alexander K. Sheppard, to the amended libel filed in said cause on the day of .

The said claimants not revising their exceptional allegations filed to the original libel filed in this , and further excepting to the said amended libel on the grounds hereinafter set forth, that is to say:

First. Because it appears from said amended libel that the

38 United States has no longer any interest in the condemnation of said lands therein named, but has released the same to Francis S. Lyon.

Second. Because it appears from said libel that this proceeding in this honorable court is being prosecuted for the sole use and benefit of Francis S. Lyon, and that there is no authority of law for the prosecution of said proceeding for the confiscation or condemnation of said lands in this cause sought to be condemned in the name of the United States, and for the benefit of Francis S. Lyon, who is a private citizen, and at the cost, charges, and expense of the said Francis S. Lyon.

Third. Because it appears that the jurisdiction of the court has been removed as far as it relates to the property sought to be condemned in this proceeding, by the release of the Government of the United States to Francis S. Lyon of the subject upon which said jurisdiction attached under the seizure of the lands mentioned in said original and amended libel by the marshal of the United States for the middle district of Alabama.

Fourth. To so much of the amended libel filed in this cause as alleges that the title of the lands therein sought to be condemned was the so-called Confederate States in aiding and abetting rebellion against the Government of the United States, because said part of said amended libel alleges no legal ground of forfeiture or condemnation of the land

described in said amended libel, in this, that the said so-called
39 Confederate States never had any capacity under the laws of the United States, or under the laws of nations, nor in any other way, to acquire the title to lands; and in this that the said so-called Confederate States was not a legal government or power or corporation, but exerted such power and authority as it possessed by mere force and compulsion, and therefore could not acquire title to lands by deed or other lawful means; and in this, that said so-called Confederate States government could not violate the acts of Congress in such cases provided to punish treason or rebellion.

Fifth. Because there is not alleged nor stated in said amended libel, any lawful ground for the confiscation or condemnation of said lands that is not fully stated and set forth in the original libel filed in this cause.

Sixth. Because the prayer of said amended libel is variant from and incongruous with the prayer of the original libel filed in this cause, and because said prayer, taken in connection with the averments in the original and amended libel, in fact asks the court to abandon its power and authority to decree in the cause according to the rights under the law and the evidence, and to decree in confirmation of the act of Major General Swayne in selling said land in said libel mentioned, in derogation of the jurisdiction and dignity of this honorable court.

40 Seventh. Because the prayer of the amended libel on the facts stated in said libel in support thereof, asks the judgement of the court against the United States and in favor of Francis S. Lyon, and upon a state of facts that has occurred since the original libel in this cause was filed.

Eighth. And because this proceeding is now being conducted in the name of the United States without any authority of law, and in violation of law, for the benefit of a private citizen, and if sustained deprive the President of his lawful power to pardon offences for the commission of which the alleged forfeitures were incurred, and of his power to remit the penalties so incurred.

Ninth. Because this proceeding, in one phase of the case presented in the amended libel, is a proceeding to confiscate and condemn lands the title to which vested in the United States by virtue of the capture of said lands by the United States Army, as is alleged in said amended libel, and is therefore a proceeding conducted in the name of the United States, and in hostility to the alleged rights of the United States.

Tenth. Because this court cannot exercise jurisdiction to condemn and confiscate lands that have been removed beyond the reach of the authority of its judgement by operation of laws enacted by the United States, after seizure of the res by the marshal and pending the proceedings on the original libel in this cause.

Eleventh. Because the amended libel sets up a state of facts on which relief is prayed, which, if granted, cannot be done in the exercise of judicial authority according to lawful discretion, but which facts and prayer for relief are so presented as to constrain the court to give judgement in a particular manner, to the exclusion of any other judgement the court would otherwise pronounce in the cause as presented by the facts and prayer of the original libel. And, reserving the said
41 exceptional allegations, and said exceptions as above stated, the said claimants for answer to said amended libel do further state and allege—

1. That on the 17th day of September, 1863, they did sign a paper purporting to be a deed of conveyance to the Confederate States of Amer-

ica, to certain lands described therein, and which are in part described in said amended libel, but the said paper-writing was not the deed of those claimants, nor of Washington M. Smith, who united with them in signing the same, in this, that the said paper-writing was procured by the said so-called Confederate States by duress. And these claimants allege that so-called government of the Confederate States, being a government without lawful authority, but a government of pure military force, and engaged unlawfully in a war of rebellion and insurrection against the United States, for the purpose of conducting and prosecuting said rebellion and insurrection, took military possession of said lands and iron-works property before the 17th of September, 1863, and seized and impressed the iron which was produced by the working of said iron-establishment, and for a long time prior thereto held such possession thereof. And the said Confederate States government refused to allow these claimants to use or work their said property for their own use or benefit, and these claimants being thus constrained, and not having the power to use and enjoy their property because of such unlawful interference and being in duress, did sign said paper-writing in said amended libel
42 mentioned, and so allege that the same is not their act or deed.

2. And the said claimants further state that said Washington M. Smith on the 22d day of February, 1869, departed this life being a citizen of the United States, and having children who are citizens and his heirs-at-law.

3. And the claimants further allege and state that they are the owners of the lands described in said amended libel, and that the said paper-writing signed by them on the 17th September, 1863, is null and void, and passed no title in said lands to said Confederate States of America, for this, that before said day these claimants did aid and abet the Confederate States of America in rebellion against the lawful authority of the United States, and the said land was thus liable to confiscation by reason thereof, and these claimants further state that after said rebellion had ceased, and before the original libel in this cause was filed, these claimants and Washington M Smith, were fully pardoned by the President of the United States for all crimes connected with their aiding and abetting said insurrection and rebellion, and were fully restored to their rights of property, except their property in slaves.

4. And in consideration of the premises, these claimants pray this honorable court to restore them to the possession of their lands in said amended libel described.

JOHN T. MORGAN,
Attorney and Proctor for said Claimants.

Filed 30th day of Nov., 1869, at 12 o'clock, m.
E. C. V. BLAKE, *Clerk.*

43 *Bill of exceptions.*

In the district court of the United States for the middle district of Alabama.

UNITED STATES
vs.
3,690 ACRES OF LAND AND THE BIBB COUNTY Iron Works, &c., C. C. Huckabee and associates, claimants, and F. S. Lyon, and associates, claimants.

Be it remembered that on the trial of this cause, the following proceedings were had, to wit:

The counsel of the respective parties entered into an agreement in writing as follows, to wit:

We agre' that the court may try this cause without a jury, reserving the right to either party to review the decision of this court upon the law and the evidence submitted to this court as in admiralty cases on the instance side upon writs of error or appeal to the Supreme Court of United States.

JOHN T. MORGAN,
For C. C. Huckabee, claimants.
CHILTON & THORINGTON & BROOKS,
For Plaintiff, and for F. S. Lyon, and Associate claimants.

There was also produced and read a letter from Assistant Attorney General J. H. Ashton to James Q. Smith, esq., United States district attorney, as follows, to wit:

44

ATTORNEY GENERAL'S OFFICE,
Washington, Oct. 24, 1866.

To J. Q. SMITH, Esq.,
United States Attorney, Montgomery, Alabama.

SIR: You are hereby instructed to dismiss the proceedings in confiscation instituted in the district court of the United States for the middle district of Alabama, against certain property situated in Bibb County, Alabama, known as the Bibb County Iron Works, claimed by Francis S. Lyon, the same having been sold to him by General Swayne of the Freedmen's Bureau, unless Lyon should prefer that for the purpose of perfecting and securing the title he should desire them to be continued for his own use and benefit; and in that case the proceedings will be carried on at the cost and charges of Mr. Lyon. In case of such dismissal, it will be made without cost to Mr. Lyon.

J. HUDLEY ASHTON,
Assistant Attorney General.

They also introduced in evidence an act of Congress of the United States, entitled "An act releasing to Francis S. Lyon the interest of the United States in certain lands, as follows, to wit:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That any interest which the United States have in the lands described in a certain deed executed by Wager Swayne, assistant commissioner of the Bureau of Freed-
45 men and Abandoned lands, to Francis S. Lyon, bearing date February 3d, 1866, be, and the same is hereby, released and confirmed to the said Lyon.

"Approved December 15th, 1866."

The following agreement of counsel was introduced in evidence:

District court of the United States for the middle district of Alabama, held at Montgomery, Alabama.

UNITED STATES
vs.
7,420 ACRES OF LAND, EMBRACING IRON-WORKS and rolling-mills.

It is agreed between the attorneys and counsel for the respective par-

ties in this cause that the following facts are to be taken and considered as duly proven, and in evidence on the trial thereof, to wit:

1. The copy deed hereto annexed, marked "1," is a true copy of an original deed. The original has been lost, but was duly executed by the grantors named therein, and duly attested and recorded. The lands mentioned therein were owned by the said grantors on the 17th September, A. D. 1863, at the date of said deed, and the time when the same was executed, and long before. The said copy shall be read and received in evidence in the place of the original, and is considered duly proven for that purpose, and it is to have the same force and effect as if it was the original deed itself, duly proven, attested, and recorded.

2. The certified copies of deeds hereto annexed, marked, respectively, Exhibits 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13, shall be received
46 upon the trial as evidence in the place of, and *and* be treated and considered in all respects as the originals, duly proven, executed, and attested and registered, proof of the execution, attesting, and recording of the originals being waived.

2. It is admitted that the claimants had each obtained, at the times respectively set forth in their respective claims, a pardon in due form, from the then President of the United States, and that each of them had accepted the said pardon, and had, in all respects complied with the conditions therein expressed, according to law, and the regulations in such case made and provided.

4. It is admitted that, before the deed (of which No. 1 is a true copy) was executed by Gray Huckabee, one of the grantors, he, the said Gray Huckabee, to wit, on the day of , 186 , for a good consideration only, voluntarily transferred and assigned to said Brown and Hawks, two of the claimants, a portion of his interest in the stock of the said company; that the stock remained in his name upon the books of the company, and he continued the ostensible owner thereof. It is further admitted that said Brown and Hawks are as much bound and affected by said deed, and by the acts of the said Huckabee concerning the property therein mentioned, as the said Huckabee himself, and as they would be if they had executed said deed, and that if the property in said deed mentioned, or the interest of said Huckabee therein is subject to condemnation or forfeiture by reason of
47 anything done or permitted by said Huckabee, that then the interest of said Brown and Hawks is equally subject to condemnation and forfeiture.

JOHN T. MORGAN,
For Claimants.
CHILTON & BROOKS,
Attorneys for Plaintiffs and F. S. Lyon.

MAY 17TH, 1869.

Agreement of counsel as to Exhibit 13, *mentioned within.*

I agree that it may be used without proof of execution.

JOHN T. MORGAN,
For Huckabee and other Claimants.

Either party may read orders from Freedman's Bureau or President of the United States without proof of official copy.

CHILTON & BROOKS,
For Plaintiffs.
JOHN T. MORGAN,
For Claimants.

Filed May 25th, 1870.

E. C. V. BLAKE, *Clerk.*

The district court of the United States for the middle district of Alabama.

THE UNITED STATES
vs.
3,690 ACRES OF LAND, C. C. HUCKABEE AND and others, claimants.

48 It is agreed that the testimony of Thomas B. Wetmore and Alexander K. Sheppard may be taken by the plaintiff, and the testimony of John Hardy may be taken by the said claimants—the testimony to be taken upon interrogatories and cross-interrogatories under commission from this court—and that when so taken, the same may be introduced in evidence in this cause, so far as the same is legal testimony, at any time within sixty days.

JOHN T. MORGAN,
J. Q. SMITH,
Attorneys for Huckabee and other Claimants.
CHILTON & THORINGTON AND BROOKS,
Attorneys for Plaintiff.

MAY 27TH, 1870.

Filed May 27th, 1870.

E. C. V. BLAKE, *Clerk.*

There was, also, introduced in evidence the following:

Deposition of J. J. McDaniel on behalf of plaintiff, and F. S. Lyon and associates.

District court of the United States for the middle district of the State of Alabama.

UNITED STATES
vs.
ACRES OF LAND, &C., C. C. HUCKABEE and others, claimants.

Interrogatories of J. J. McDaniel, a witness in this case, on behalf of the plaintiff. (Said witness resides in Bibb County, in the State of Alabama.)

1. Whether or no are you acquainted with the Brierfield
49 Iron Works, in Bibb County, in the State of Alabama, and about how long have you known them?

2. Were you or no ever employed at the said works in any and what capacity, and at what time, and for how long a period during the war; and if the said iron-works were in operation while you were there, during the war, state who had the management and control thereof, and whether or no any and what person or persons managed and controlled the same as the property of the so-called Confederate States, or as the agent or agents of the said Confederate States, and were or no said works engaged, during that period, in manufacturing anything,

and what, for the benefit of or on account of the said so-called Confederate States?

3. Were or no the said works captured during the recent war by the Federal troops? State all the facts and circumstances connected with the capture, and whether or no any of the Confederate troops were posted at or near said works, and for what purpose, and whether or no any skirmish or battle took place between any and what forces, and whether or no any of said works were burned or destroyed by any and what forces, and fully and particularly what transpired on that day, and about how long the Federal troops remained in possession of said works.

4. Did or no any and what Federal troops, any agents, take possession of said iron-works after the war, and at what time; about what was the number of said troops, and were or no said iron-works at any what time afterwards turned over and delivered to General J. Gorgas, or to any other and what person, and under what circumstances?

5. Do you know or can you state any other matter or thing which may be of any benefit or advantage to the plaintiff or defendants? If yea, state the same fully and particularly.

CHILTON AND THORINGTON AND BROOKS,
Attorneys for Plaintiffs.

We consent that Paul H. Lewis, Joseph F. Johnson, W. H. F. Randall, and Robert H. Sterratt, B. B. Lewis, and Thomas B. Whitmore, citizens of Montevallo, in Shelby County, and Selma, in this State, or either of them, may take the testimony of the witness, J. J. McDaniel, upon the interrogatories and cross-interrogatories, and without any commission, and that said testimony may be used on the trial of the cause precisely as if the same had been duly taken under and by virtue of a proper commission issued from said court.

MORGAN & LAPSLEY,
Solicitors for Claimants.
CHILTON & THORINGTON AND BROOKS,
Attorneys for Plaintiffs.

MAY 2, 1870.

THE STATE OF ALABAMA, *Dallas County:*

I, Jos. J. Johnson, one of the commissioners named in the agreement hereto annexed, do hereby certify that, in pursuance thereof, I caused the said witness, J. J. McDaniel, to come before me at the office of Johnson and Nelson, in the city of Selma, on the 13th day of May, A. D. one thousand eight hundred and seventy, being the time and place appointed by me, and that he being then and there first duly sworn by me to speak the truth, the whole truth, and nothing but the truth, and also to make full and true answer to such interrogatories as might be propounded to him, thereupon answered and deposed as follows, to wit:

To the first interrogatory he saith: I have known the Brierfield Iron Works, in Bibb County, Alabama, since March, 1864, and have lived there since that time.

To the second interrogatory he saith: I was employed in the said Brierfield Iron Works in March, 1864, as a puddler, and remained there in that employment until the works were burned, in March, 1865. Col. Henry Irvin had charge of the rolling-mill, and Maj. Weeks had charge of all the works. They were both confederate officers, and were agents

for and managed the works for the late confederate government. All the work that was done from March, 1864, until the property was
52 burned, was for the benefit of, and under the charge, supervision, and direction of the Confederate States government, so called.

To the third interrogatory he saith: On the last day in March, 1865, a Kentucky brigade of confederate troops were at the works, in Brierfield, for the purpose of defending them. A part of Gen. Wilson's command of United States troops came up on that day, and a skirmish took place about a mile from the rolling-mill. The confederate troops were driven back, and the Federal troops took possession of the works. The fight took place after the capture of the furnaces, but before the Federals reached the rollings-mills; the furnace is about three miles from the rolling-mills. The furnace and rolling-mills were burned on that day by the Federal troops.

To the fourth interrogatory he saith: A company of Federals took possession of the works in the latter part of May, or in June, 1865, under the charge of Col. Duval, who was agent for the Federal Government, and Captain Arms, who was assistant agent. There were several different commands in possession of the works. There was about twenty men and a sergeant first came. They were infantry. Afterwards they were relieved by about the same number of cavalry. They were afterwards relieved by a captain and some twenty-five men of a New Jersey regiment; I think it was the 21st New Jersey Regiment.
53 Captain Arms and Col. Duval were the agents in charge all the time the New Jersey company remained, until the works were turned over to General J. Gorgas, by the Federal agents, in January, 1866.

To the fifth interrogatory he saith: I know of nothing else that will benefit either party.

J. T. Morgan, esq., as attorney for claimants, appeared; and in response to his interrogatories the witness answered as follows, to wit:

He saith: Huckabee and his associates had nothing to do with the works after I went there, and no control over them. The works were in the exclusive possession of the confederate officials until they were burned. General Wilson did not leave any troops at the works. There were no Federal troops at the works after they were burned until in May or June following. Capt. Ross and Grady remained at the works until Capt. Arms and Col. Duval came. Capt. Ross was superintendent of the rolling-mills under the confederate government, and started to build them up again after they were burned; they had charge of the property until the Federal Government took possession. The persons who first took charge of the property for the Federal Government were Capt. Arms and Col. Duval, who acted as Treasury agents.

J. J. McDANIEL.

And I, Joseph F. Johnson, commissioner as aforesaid, do fur-
54 ther certify that the personal identity of said witness has been proven before me, and that his aforesaid evidence and answers under oath were taken down and reduced to writing by me, and, being closed, were examined by the witness, and by him approved, and that thereupon the said evidence was subscribed by said witness in my presence and on the day and at the place specified in the caption.

In witness whereof I have hereunto set my hand and affixed my seal this 13th day of May, A. D. 1870.

[SEAL.] JOSEPH F. JOHNSON, [L. S.]
Commissioner.

Filed and published May 27th, 1870, at 12, m., by special order of court.

E. C. V. BLAKE, *Clerk.*

There was als' introduced in evidence the following

Deposition of Alexander E. Mott on behalf of the plaintiff, and F. S. Lyon and associates.

United States district court, middle district, at Montgomery, Alabama.

THE UNITED STATES
vs.
3,960 ACRES OF LAND, C. C. HUCKABEE AND others, claimants,

Interrogatories to A. E. Mott, a witness in the above case, on behalf of the plaintiffs.

1. Whether or no are you acquainted with Caswell C. Hucka-
55 bee, of Marion, Perry County, Alabama, and about how long have you known him?

2. Look at the instrument shown you at the time of your examination, purporting to be a copy of a deed executed by C. C. Huckabee to the Confederate States of America. Did you ever see the original of said deed, and when and where did you see it, and whether or no did C. C. Huckabee execute or make any such deed in your presence, and did you or no sign your name thereto as an attesting witness in his presence, or at the request of any and what person, and did any other and what person sign or subscribe his name thereto as an attesting witness? What relation, if any, were the said persons to said Huckabee?

3. Do you know or can you state any matters or things, including declarations of said Huckabee, which may show that he executed a deed conveying any and what lands to the so-called Confederate States at any time during the war? If yea, state all such matters, things, and declarations fully and particularly, and as much so as if you were thereto expressly and particularly interrogated, to the best and utmost of your recollection?

4. Do you know or can you state any facts or circumstances, matters or things, declarations of and conversations with said Huckabee which may show or tend to show that the paper-writing now shown to you is a copy of any deed made by said Huckabee? If yea, state the
56 same fully and particularly to the best and utmost of your recollection, giving dates as near as you can.

5. Whether or no do you believe that the said Huckabee made any deed to the Confederate States? Whether or no do you believe said deed was attested by you? Whether or no do you believe the paper-writing aforesaid is a copy of said deed? State fully and particularly the facts, circumstances, and reasons for such belief.

6. Do you know or can you state any other matter or thing which may be of any benefit or advantage to the plaintiff in this suit? If yea, state the same fully and particularly.

CHILTON AND BROOKS,
Attorneys for Plaintiff.

We agree that Joseph F. Johnson may take the answers of the wit-

ness to the interrogatories and cross-interrogatories, and that the answers and testimony of said witness may be used on the trial of said cause in the same manner and to the same extent as if the same had been legally taken upon a proper commission, duly issued upon a proper affidavit, as if the witness resided out of the judicial district, and more than one hundred miles from the place of holding said court, and with the further agreement that the same objections may be taken on the trial of the cause to the deposition or any part thereof that could be taken if the witness were testifying in open court.

Attorney for Claimant.
JNO. T. MORGAN.

57 Cross-interrogatories to A. E. Mott.

1st. How long were you employed in the service of the Bibb County Iron Works, and during what years were you so employed, and in what capacity did you serve said company; was it a chartered corporation, and who were its stock-holders; who had the chief management of its business?

2. How much capital was employed in said company to the best of your knowledge, and how many hands, and at what daily or monthly expense, as nearly as you can tell, while you were in the service of the company; what would be a fair average computation of the daily expenses of said establishment while you were in its service?

3. Was not said company interfered with and prevented by agents or officers of the Confederate States from disposing of the products of their iron works? And state fully and carefully all you know on this subject; when and by whom such interference was made, and by what means it was enforced, and how long it continued, and to what extent it prevented the company from the free and profitable use of its property, and at what prices it was compelled to sell its productions, and to what extent it *what* forbidden to sell its productions to any purchaser besides the Confederate States?

4. Was not an agent or agents of the Confederate States and
58 military guards stationed at the iron works of the Bibb County Iron Company (by whatever name it was known) to guard the same, and to prevent by force the sale or transfer of any iron to any other purchaser except the Confederate States, or to seize the same and to arrest the person who might attempt so to sell or dispose of any iron made at said works? State fully everything you may know on this subject. If you know of any manager or member of said company having been arrested, or threatened with arrest, for selling or attempting to sell any of the iron property at said furnace, tell which of them, and when, and by whom he was arrested or threatened with arrest.

5. If you know of any efforts made by the confederate authorities or by any agent of the Confederate States to force or by any means to compel the said company to sell their iron-works property to the Confederate States, or to any agent thereof, tell fully all you know on that subject, giving the circumstances of the transaction; or if any restrictions were placed on the company as to the disposal of their productions which had the effect to compel them to sell their property or to stop business at a great loss of money, tell *on* all you know on that subject.

6. Do you not know that the deed, a copy of which is shown to you, and the deed from the Bibb County Iron Works, were made in consequence of the interference of the confederate authorities with said com-

pany, and the fact that, by reason of such interference, the
59 company could not use its said property with advantage. Tell all you know on this subject that will benefit the defendant.

JOHN T. MORGAN,
Attorney for the Defendant.

The following deed was also introduced in evidence:

This indenture, made and entered into between C. C. Huckabee, of the county of Bibb, and State of Alabama, of the first part, and the Confederate States of America, of the second part, witnesseth that the said party of the first part, for and in consideration of the sum of nine thousand and six hundred dollars (9,600) to him paid, the receipt of which is hereby acknowledged, has bargained and sold, and do' hereby bargain and sell, to the Confederate States all the timber now on or hereafter produced on the following-described lands, to wit:

The southwest of the southeast quarter of section thirty-six, (36,) township twenty-four, (24,) range eleven (11) east; the south half of the northeast quarter, the northwest quarter of the northeast quarter, the east half of the northwest quarter, the east half of the southwest quarter, and the southeast quarter of section two, (2,) township twenty-three, (23,) range eleven (11) east; the northeast quarter, the east half of the northwest quarter, the north half of the southeast quarter, and the northeast quarter of the southwest quarter of section eleven,
60 (11,) township twenty-three, (23,) range (11) east. Also, the northwest quarter of the southwest quarter of section twelve, (12,) township twenty-three, (23,) range eleven (11) east, containing eight hundred and eighty acres (880) *acres*, more or less, lying and being in Bibb County, Alabama: To have and to hold the right and privilege of cutting and transporting all said timber now and hereafter perpetually on said land, with the privilege of ingress and egress on said land, with all the right to cut and transport said timber, or to use it or burn it on said land, to the only proper use and behoof of said party of the second part and their assigns forever—the fee-simple in said lands being retained to the said party of the first part; and the party of the first part covenants to and with the said party of the second part and their assigns that he is lawfully seized in fee of said land and timber thereon; that the same is unincumbered, and that he will forever warrant and defend the title to said timber, with the privileges herein conveyed, against the claims of all persons whatsoever.

In witness whereof the party of the first part has executed this deed this 15th day of November, 1864.

C. C. HUCKABEE. [L. S.]

A. E. MOTT.
JA'S E. DRAKE.

STATE OF ALABAMA, *Dallas County.*

61 I, S. W. John, a notary public in and for said county and State, hereby certify that A. E. Mott, whose name is signed to the foregoing conveyance as a witness, known to me, appeared to me the day, and, being sworn, states that C. C. Huckabee, the grantor in the conveyance, voluntarily executed the same in his presence, and in the presence of the other subscribing witness, on the day the same bears date; that he attested the same in the presence of the grantor and of

the other witness, and that such other witness subscribed his name as a witness in his presence.

Given under my hand this day of March, 1866.

[s.] S. W. JOHN,
Notary Public.

I hereby certify that the foregoing conveyance was filed in my office for record on the 29th day of March, 1866, and recorded on the 4th day of April, 1866; and I further certify that there *is* fifty cents internal-revenue stamps on the same.

JACKSON GARDNER,
Judge of Probate.

THE STATE OF ALABAMA, *Bibb County:*

I, Jackson Gardner, presiding judge of the court of probate for the county of Bibb, in the State aforesaid, hereby certify that the foregoing pages are a true copy of the said deed and certificates thereon; and I further certify that I am the sole judge and clerk of said court.

62 Given under my hand and seal of office, at office, in Centreville, this May the 1st, 1868.

[SEAL.] JACKSON GARDNER,
Judge of Probate.

[One dollar State stamp.]

STATE OF ALABAMA, *Dallas County:*

I, Joseph F. Johnson, the commissioner agreed upon by Brooks & Haralson, attorneys for , and Morgan & Lapsley, attorneys for , in a certain case pending in the district court of the United States, for the middle district of Alabama, whereof the United States is the plaintiff, and 3,960 Acres of Land, defendant, do hereby certify that, by virtue of said agreement, I caused the said witness, A. E. Mott, to come before me at the office of Portis & Johnson, in the city of Selma, on Saturday, the 23d day of May, A. D. 1868, being the time and place appointed by me, whereof the said parties had due notice, and he, being then and there first duly sworn by me, to speak the truth, the whole truth, and nothing but the truth; and also to make full and true answer' to the interrogatories and cross-interrogatories hereto annexed, thereupon answered and deposed as follows, to wit:

To the first interrogatory he saith: I am acquainted with Caswell C. Huckabee, and have known him about seven years.

63 To the second interrogatory he saith: To the best of my recollection, I have seen the original of the deed, a copy of which is hereto annexed. I think that I carried it to S. W. John, notary public, a copy of whose certificate is on said copy, in Selma, during the month of March, 1866. I saw Mr. Huckabee execute the conveyance mentioned. I signed my name as an attesting witness to the deed in the presence of Mr. Huckabee, I believe. I do not remember at whose request I signed it. James E. Drake signed the deed at the same time, to the best of my recollection. I am not related to Mr. Huckabee. I believe Mr. Drake is a relation to C. C. Huckabee, but I do not know in what degree.

To the third interrogatory he saith: I have no recollection of Mr Huckabee's ever having conveyed any land to the confederate government at any time. The Bibb County Iron Company, of which Mr. Huckabee was president, did, during the war, convey certain lands to

the Confederate States government. I think Mr. Huckabee signed the conveyance. The lands conveyed were those known, at the time of conveyance, as the Bibb County Iron Works land, lying in Bibb County, Alabama, upon which the works were built and contiguous thereto, which deeds were duly recorded in the probate court of Bibb County. I do not remember the date of the conveyance.

To the fourth interrogatory he saith: I know of no matters or things, or any declarations of Mr. Huckabee other than what I have stated in my answers to the previous interrogatories which tend to show
64 that the exhibit hereto attached is a copy of a deed made by Mr. Huckabee.

To the fifth interrogatory he saith: To the best of my recollection, C. C. Huckabee made a deed to the Confederate States. I attested it, and I believe the exhibit hereto attached is a copy of said deed. The copy hereto attached, with its several certificates, produce upon my mind the belief that I attested the original of which this purports to be the copy, without remembering the numbers or particular description of the lands mentioned in the original. I have an indistinct remembrance that it conveyed timber as mentioned in the copy.

To the sixth interrogatory he saith: The government of the Confederate States did, after this conveyance, use timber from the lands mentioned therein. I do not remember to what extent. I have no recollection of any demand for payment for said timber. I should probably have known if any such demand or payment ever was made.

To the cross-interrogatories:

To the first interrogatory he saith: I was employed, in May, 1862, or thereabouts, in the service of the Bibb County Iron Company, as bookkeeper; afterwards when they accepted their charter, I was elected secretary and treasurer. I do not remember when this occurred. I remained with the company up to the time of the transfer to the government of the Confederate States. I do not remember what time that transfer was made. They obtained and accepted a charter some
65 time after I went into the company's employment. To the best of my recollection, C. C. Huckabee, Gray Huckabee, Wash. M. Smith, J. Newton Smith, and Alfred S. Huntington were the stockholders at the time the charter was accepted; afterwards A. K. Shepherd became a stockholder. C. C. Huckabee, as president, and A. K. Shepherd, as superintendent, had the chief management of the business.

To the second cross-interrogatory he saith: I do not remember the amount of capital used by said company, nor can I remember the number of hands employed by the company, or the daily or monthly expenses of the company. I was at work all the time on the books of the company, and there was no necessity to charge my mind with any numbers, dates, or amounts, as I could at any time refer to the entries; and having been a book-keeper many years, my recollection of dates and amounts is particularly indistinct and vague.

To the third cross-interrogatory he saith: The government of the Confederate States, through its officers and agents, required the company to sell to them the products of the company. Maj. Hunt, then in the service of the confederate government, sent two agents to see that the requirements of the government were complied with by the company. They remained at the company's works until they (the works) were transferred to the Confederate States government. They prevented the company almost entirely from selling to any person or corporation other than the confederate government. My recollection is that the

66 government paid from fifty to seventy-five dollars per ton for the iron.

To the fourth cross-interrogatory he saith: There was an agent of the confederate government at the works of the company, whose duty it was to watch and prevent the shipment or sale of any iron to any other party than said government. There was, to the best of my recollection, no guard or guards to enforce a compliance with the demands of said government; and my recollection is that said agent was instructed to report any violation of these requirements, and it was believed that force would be resorted to enforce a compliance therewith. I do not remember that any member or manager of the company was ever arrested or threatened with arrest. My recollection is that there was a threat that the men detailed from the confederate army, who were working for the company, would be sent back to the ranks if the products of the company were not turned over to the government.

To the fifth cross-interrogatory he saith: From the conversation of the stockholders and their deliberations, I was led to believe that they believed, if they did not go with the production of iron at the prices the government was paying them, the works would be seized a'd used by the confederate government; that the government, in other words, would either compel the company to go on with the delivery of iron at prices stated, or would "press" them in case the company should
67 fail to sell them to the government. I know of no direct or indirect force exerted upon the company to compel them to sell to the government aforesaid, except the requiring the sale of the products thereof as aforesaid. In answer to the latter part of the interrogatory, I will say, in addition to my previous answers, that the price' paid by the government of the Confederate States to the company for their products were such as to cause a loss to the company. They could not afford to make the iron at the prices paid them by the government aforesaid.

To the sixth cross-interrogatory he saith: To the best of my recollection, the confederate government, shortly before the purchase of the works, offered the company to purchase their property, and enquired at what price the company would sell. The company offered to take seven hundred thousand (700,000) dollars. The government then offered 600,000 dollars, which the company accepted, and the same was thereupon made, but I do not know whether they sold on account of the interference or for the value of the consideration offered them by the government. I cannot tell whether Mr. Huckabee sold the property conveyed by the deed, a copy of which is hereto annexed, for the consideration paid him by the government or not. This sale occurred after the government had purchased the works of the company. The agent of the government controlling the works was in the habit of impressing such timber as he desired for the use of the works, having the same assessed under regulations prescribed by the government where the owners declined to sell.

ALEX'R E. MOTT.

68 And I, Joseph F. Johnson, commissioner as aforesaid, do further certify that the said witness is personally known by me; and that his aforesaid evidence and answers, under oath, were taken down and reduced to writing by me, and, being closed, was examined by the witness, and by him approved; and thereupon the said evidence was subscribed by said witness in my presence, and on the day and at the place specified in the caption.

Witness my hand and seal, this 23d day of May, A. D. 1866.

JOSEPH F. JOHNSON, [L. S.]
Commissioner.

Personally appeared W. M. Brooks, who, being duly sworn, deposeth and says he received this deposition from the post office at Montgomery, enclosed to him with other papers; that the same has not been out of his possession or opened by any one since he received it.

E. C. V. BLAKE, *Clerk.*

There was introduced in evidence the following

Deposition of John H. Robeson, on behalf of claimants, C. C. Huckabee and associates.

In the district court of the United States, middle district, at Montgomery.

THE UNITED STATES
vs.
3,690 ACRES OF LAND, C. C. HUCKABEE AND other claimants.

69 Interrogatories to John H. Robeson, a witness for C. C. Huckabee and other claimants:

Int. 1. Do you know the place in Bibb County, Ala., known as the Brierfield Iron Works? If yea, were you ever employed at said place; and if yea, state in what capacity you were employed, and when, and by whom, and how long did you remain there in such employment?

Int. 2. When did the possession of said place change from the hands of C. C. Huckabee and his associates, and into whose possession did it then go; how long had you been there before such change of possession?

Int. 3. If while you were at said place you were under the orders of any military officer of the United States, tell who that officer was, and what office he held. State whether said orders were issued before or after the possession of said iron-works property changed hands. If they were in writing, tell whether you have them; or if they are lost, tell how you know the fact, or what search you have made for them, and state as fully as you can the contents of said orders or instructions.

Int. 4. If, under such instructions and before the possession of said property changed hands, you made any demands on the owners of said iron-works in respect to the hauling or shipment of iron, tell what demand you made, and tell by what authority you made it, and tell
70 what said person on whom you made such demand said to you when you made it.

Int. 5. Tell fully all you know as to orders issued by military officers of the Confederate States for the impressment of iron or other material, or teams or other property at said iron works, prior to the time that the possession of said property was changed, and state whether said orders were communicated by you or by any other person to C. C. Huckabee, or to any of his associates before they gave up the possession of said iron works.

Int. 6. About how many hands did said C. C. Huckabee employ on said place in said business in the spring and summer of 1863, and state as nearly as you can, the average daily expenses of said business of all

kinds; state the market-price of pig-iron and wrought-iron, at Selma, or at said works in the spring and summer of 1863, and tell the prices that the confederate authorities were giving the said C. C. Huckabee, for such iron during that time. If you know any facts tending to show whether or not the Confederate States officers or authorities interfered with said Huckabee and his associates in the disposal of their iron, or prevented or prohibited them from disposing of their iron in the market, tell fully all you know on that subject, and state any other facts within your knowledge that will benefit said Huckabee and his associates in this case.

MORGAN AND LAPSLEY,
Attorneys for Huckabee and others.

71 We consent that the deposition of the witness above named may be taken in said cause by Pleasant G. Moore, without commission, and that his deposition shall be read in evidence as if it had been regularly taken under the rules of court, and as if it were the testimony of the witness given in open court.

CHILTON AND BROOKS,
Attorneys for Plaintiffs.

FEBRUARY 11TH, 1870.

In the district court of the United States for the middle district of the State of Alabama, at Montgomery, Ala.

UNITED STATES
vs.
3,690 ACRES OF LAND, C. C. HUCKABEE ET AL., claimants.

Cross-interrogatories to the witness, John W. Robeson, on behalf of the plaintiff:

Cross-int. 1. What was the agreement or arrangement between the said C. C. Huckabee and associates with the Confederate State' government or its agents? Did not the said Huckabee and associates agree to furnish to any and what military officer of the Confederate States, iron for any and what purpose, and in what quantities, and at what price; and were or no any and what number of persons detailed, if any, and what way, and by what means to aid in doing any and what ser-
72 vice at said iron works; and were not said persons liable to military duty in the Confederate States?

2d. If you state in reply to the interrogatories-in-chief, that you made any demand on the owners of said iron works, or any of them, or their agents before the said works passed out of the possession of said C. C. Huckabee, and associates, state fully and particularly what that demand was, and who made it? Was not any and what complaints made of the then owners of said iron works, and what was the nature and character of the complaints; and did you make them known to said owners, or either, and which of them? State all the conversations that passed at the time you made said demand, fully and particularly.

3d. Did you have any orders to impress any of the property of the owners? If yea, state them fully and particularly. Did you impress any of the property of said C. C. Huckabee and associates? Why did you not impress it? How long, or about how long did they keep possession of said property after you made said demand?

4th. Did you not hear any and *what* of the owners express a willingness or desire to sell said property? Did you not after the sale was made hear any and which of them say in substance they had made a good sale thereof? At what time did said property change hands and go into possession of the agents of the Confederate ?

73 5th. If you state in your reply to the interrogatories-in-chief the value or prices of iron, state whether or no the value as stated by you was not in confederate treasury notes or confederate money; was such iron selling in this section of the country for any other kind of money about that time?

6th. Do you know or can you state any matters or things which may show, or tend to show, that C. C. Huckabee failed to fulfill their agreement with the Confederate States government, or any facts or circumstances, matters or things, which may show that the former owners of said iron works sold the same freely and voluntarily to the Confederate States? If yea, state the same fully and particularly.

7th. Do you know or can you state any other matter or thing which may be of any benefit or advantage to the plaintiffs in this suit? If yea, state the same fully and particularly.

8th. Were you present, and did you take any part in the transaction or negotiation or arrangement between the said *said* C. C. Huckabee and associates, and the agents of the Confederate States, for the sale of said property, and what part, if any, did you take in the same?

CHILTON & BROOKS,
Attorneys for Plaintiffs.

THE STATE OF ALABAMA, *Dallas County:*

I, P. G. Wood, the commissioner named in the agreement of
74 counsel endorsed on the direct interrogatories, do hereby certify, that I caused John H. Robeson, the said witness, to come before me at my office at Selma, Alabama, on Monday, February 21st, 1870; that said witness was then and there by me first duly sworn to speak the truth, the whole truth, and nothing but the truth, in answer to the interrogatories and cross-interrogatories hereto attached, and that thereupon he answered and deposed as follows:

The witness, John H. Robeson, answers: I do know the place in Bibb County, Alabama, known as the Brierfield Iron Works. I was employed at said place as agent of the nitre and mining bureau of the Confederate States. My employment there began about January, 1863, and extended up to about the time the said works changed hands, the exact date not recollected, but I think it was in 1864; at said time I ceased to act as agent in the nitre and mining bureau, but from the time I ceased to act as agent for said bureau, I was employed at Brierfield Iron Works, as clerk in the military stores department, up to the time said works were burned, in 1865, by the Federal forces. I was all the while in the employment of the Confederate States.

2. To the second interrogatory he answers: The possession of said place changed from the hands of C. C. Huckabee and his associates some time in the year 1864, I think it was; I do not recollect the exact date. It then went into the possession of the Confederate States. I had
75 been there before such change—since January, 1863.

3. To the third interrogatory he answers: While I was at said place, I was not under the orders of any military officer of the United States; but was under the orders of a military officer of the Confederate States, to wit, Lieut. Col. William R. Hunt, who was commander of the

nitre and mining bureau of the district of which Alabama was a part. My orders were issued before said iron works changed hands; said orders were embraced in letters written to me by said Hunt. I have not got those orders in my possession. I lost them about the time the raid came through that country—about the time said works were burned. I have frequently looked for said orders since said works were burned, amongst my letters and papers, and have been unable to find them, and I suppose that I burned said orders myself, about the time of said raid, among a lot of old letters and papers that I burned, and that I considered useless. The substance of the orders that I received from Col. Hunt, and that have been lost, as just stated, as near as I can remember them, were as follows: In the first letter I was directed to forward the iron from the Brierfield Iron Works as fast as it was manufactured; and if necessary to impress the teams of the iron works, or the teams of anyone else, to haul said iron to the depot, for shipment to Selma. In the second letter or order I was instructed that if I was opposed
76 by any member of the iron-works company in shipping the iron to inform him, Col. Hunt, and that he would then direct me to report the names of the employees of the iron-works company to the officers of the conscript bureau for conscription. The foregoing is the substance of the orders that I received from Col. Hunt, as near as I recollect them.

4. To the fourth interrogatory he answered: Before the said property changed hands, I spoke to Col. A. K. Shepherd, their superintendent of the iron works, about the orders I had received from Col. Hunt, the substance of which I have given above; and I showed him said orders and intended them as a demand on the company for the iron and for the teams of the company with which to haul it. I made the demand on him by authority of the order of Col. Hunt. When I made said demand Col Shepherd first said, "I will run off the drivers, and the teams will be useless to you without drivers." I then told him I would impress drivers and teams belonging to farmers in the country round. His remark to this was, "I know too much of Col. Hunt's bull-dog determination to oppose him, when he has taken it into his head to do anything." The orders given me by Col. Hunt were not given because the iron company had absolutely refused to deliver the iron, but because said company did not deliver the iron as rapidly as it was made. From the time of the demand made by me as just stated, said company did in-
77 crease the team-power engaged in hauling iron, and delivered the iron faster than before.

5. To the fifth interrogatory he answers: My foregoing answer contains all the information I have on the subject inquired about in this interrogatory.

6. To the sixth interrogatory he answers: They employed about two hundred hands I suppose. I cannot tell anything about the average daily expense of said business. I cannot state what was the price of iron at that time. I think the confederate authorities were giving the said Huckabee $75.00 per ton for iron. The said Huckabee and his associates were forbidden by the confederate officer, Col. Hunt, to sell the iron made by them; and a part of my business at the iron works was to see that none of the iron was taken from there for any private enterprise. I do not know any other fact, that I am aware of, that will benefit the said Huckabee and his associates.

JOHN H. ROBESON.

1. To the first cross-interrogatory he answers: I was notified that the

Iron Company, C. C. Huckabee, and associates were under contract with the confederate government. I was notified by Col. Hunt, who placed me at the iron works as agent. I know, of my own knowledge, nothing about what arrangement was made by the Iron Company and any officer, as I heard no contract made, and saw no written contract. There were, I suppose, from twenty to thirty persons detailed, through
78 Col. Hunt, to do service in and about the iron works as mechanics and overseers. Said persons were liable to military duty in the Confederate States.

2. To the second cross-interrogatory he answers: In my direct answers I have stated, as fully as I am able, all the particulars of the demand that I made on Col. Shepard, the superintendent of said iron-works. I made no other demand except that one. I have stated, as near as I can, all the conversations that occurred when said demand was made.

3. To the third cross-interrogatory he answers: I had orders, as already stated, to impress teams if the owners refused to furnish transportation. I have, in my direct answers, stated my orders as fully as I am able. I did not impress any of their property, for the reason that they complied with the demand made on them, and furnished additional transportation. I think they kept possession of said property for about six months after I made said demand.

4. To the fourth cross-interrogatory he answers: I never heard any of the owners express a willingness or desire to sell said property. All that I ever heard said about the sale of said property was a remark made by Mr. A. K. Shepard, to this effect, "That Mr. Huckabee had sold the property too cheap; that he could have gotten a million of dollars for it as easily as the price he did get." I cannot remember about what time said property changed hands, but think it was in 1864.

79 5. To the fifth cross-interrogatory he answers: I know nothing about the price of iron at that time except that *that* I have already stated. I think no iron was selling for any other kind of money than confederate money.

6. To the sixth cross-interrogatory he answers: I know nothing about the matters here referred to. My business was at the iron works, and was to receive and ship iron as fast as it was delivered; and I know nothing, of my own knowledge, about the contract between Col. Hunt and the owners of the iron-works.

7. To the seventh cross-interrogatory he answers: I know nothing that will benefit the plaintiff.

8. To the eighth cross-interrogatory he answers: I was not present at said sale, and had no connection with said sale.

JOHN H. ROBESON.

And I, the said P. G. Wood, do further certify that I have personal knowledge of the identity of the said John H. Robeson; that his aforesaid answers were reduced to writing by me, and subscribed by said witness in my presence on the 21st February, 1870.

P. G. WOOD, [L. S.]
Commissioner.

POST-OFFICE, SELMA, ALABAMA,
February 21st, 1870.

I hereby certify that P. G. Wood deposited this package in this office for transmission by mail on this day.

80 GEORGE P. MARLOWE, JR., *P. M.*

Filed in office February 23d, 1870, with both ends of this envelope broken when taken from the post-office.

E. C. V. BLAKE, *Clerk.*

There was als' introduced in evidence the following

Deposition of Thomas B. Wetmore on behalf of F. S. Lyon et al. and The United States of America, plaintiff.

District court of the United States for the middle district of Alabama.

To Green P. Wood, James L. Evans, William B. Young, or either of you:

Know ye, that we, having full faith in your prudence and competency, have appointed you commissioner', and by these presents do authorize you, or any one or more of you, at such time and place as you may appoint, to call before you *and appoint* and examine Thomas B. Wetmore as witness in behalf of F. S. Lyon, a plaintiff in a case pending in the district court of the United States for the middle district of Alabama, at Montgomery, wherein The United States is plaintiff, and 3,690 Acres of Land, C. C. Huckabee and others, claimants, are defendant, on oath, to be by you administered, upon interrogatories and cross annexed to this commission; to take and certify the deposition of the witness, and return the same to our said district court with all convenient despatch, under your hands and seals.

81 Witness Hon. Richard Busteed, judge of the said court, this 4th Monday of May, A. D. one thousand eight hundred and seventy.

Issued the 17th day of January, 1870.

E. C. V. BLAKE, *Clerk.*

In the district of the United States for the middle district of Alabama.

THE UNITED STATES
vs.
3,690 ACRES OF LAND, &C., C. C. HUCKABEE et al., claimants.

Interrogatories to Thomas B. Wetmore, a witness in this case, who resides in Selma, Alabama, on behalf of the United States and F. S. Lyon and associates.

1. Where do you reside, and how long have you resided there? Are you or not a lawyer by profession, and how long have you been such?

2. Did or no the so-called Confederate States, at any and what time, purchase or acquire from any and what corporation, and from any and what persons, any real estate situated in the county of Bibb, in this State, and by what name was the same called, and was or no any deed in writing executed to the Confederate States by such corporation, and any and what persons, and at what time and place, and was or no the execution of said deed acknowledged by said corporation, and by

82 any and what persons, at what time, and before what officer, and what disposition was made of said deed, prepared or written, and at whose instance and request; and set forth or annex, if you can do so, a copy of said deed and acknowledgment to the best of your knowledge, recollection, and belief, and state whether you have done so, and by what marks, letters, or figures the same may be identified?

3d. If you took any part in negotiating or completing, or either, the trade above referred to, state at whose instance and request you did so, and under what circumstances you did it, and where, and about how long you were engaged in the business, and whether or no any compensation was paid you, and by whom, for your services.

4. Was or no any resolutions adopted by said corporation, or any authority given by said corporation to its president, or any and what official, to execute said deed, and make such sale or transfer? By what means was such authority conferred? Set forth, if in writing, a copy, or substantial copy, of all resolutions adopted by said corporation by its board of directors or stockholders touching or concerning in any way the matters inquired about, and state the circumstances under which the same were adopted, and the persons by whom, and the time when, and the place where, and the occasion upon which, and the purpose
83 for which the same were adopted.

5. If you can do so, state any facts and circumstances, matters and things, including conversations with or declarations of all, or any or either, and which of the grantors in said deed which may show, or tend to show, that the sale of the property in said deed mentioned was made, and that said deed was executed not under duress, but freely and voluntarily, and give a full, true, and particular history of the whole matter from the time of the inception to the final consum'ation, and tell what part you and the said grantors took therein, and what part the Confederate States or its officials or agents took therein, and whether or no any threats were made by Col. Hunt or Maj. Hunt on behalf of the Confederate States, *or* coerce the sale thereof; and whether or no any statute or law then existed whereby the Confederate States, or any of its authorized officials or agents, were authorized to seize and impress the property in said deed mentioned, or any such property.

6. Were you or no acquainted with all, or any, and which, of the grantors in said deed mentioned, and about how long have you known them respectively? And state whether or no, at the date of said deed, they, or any, and which of them were men of wealth, intelligence, or either, and whether or no they, or either, and which of them held any, and what, offices or agencies under the Confederate States, and
84 the State of Alabama; and whether or no all or any, and which of them were ever members of the legislature of the State of Alabama, and whether or no they were men of power and influence in the commnnity, and state all facts and circumstances tending to show the same; and state whether or no any facts, circumstances, matters, or things existed which produced, or were calculated to produce, the reasonable belief or apprehension in the mind of all, or any, and which of said grantors that in selling or agreeing to sell said property, or in making said deed to the Confederate States, they, or either of them, were under duress or under any apprehension even that said property would be seized or impressed by the so-called Confederate States, or by the authorities, officials, or agents thereof, or that they, the said grantors, would be in any manner deprived of said property against their will; and state whether or no the sum or price they agreed to take for said property was the fair, full, and reasonable value thereof, and whether or no they appeared to be satisfied with the price, and whether or no the Confederate States acquired said property for any and what particular purpose, and whether or no the said grantors were aware of the purpose for which the same was required by the Confederate States, and whether or no said property was afterwards used in any and what business, and for what purpose.

85 8. Do you or not know, or can you state any other matter or thing which may be of any benefit or advantage to the United States, or to F. S. Lyon and associates in this suit; if yea, state the same fully and particularly.

CHILTON, THORINGTON & BROOKS,
Attorneys for Plff and F. S. Lyon et al.

We suggest as commissioners to take the testimony of the witness, Thomas B. Wetmore, the names of Green P. Wood, James J. Evans, and William B. Young, who reside in Selma, Alabama.

CHILTON AND BROOKS,
Attorneys for Plaintiff, &c.

In the district court of the United States for the middle district of Alabama.

THE UNITED STATES
vs.
3,690 ACRES OF LAND, C. C. HUCKABEE AND others, his associates, claimants.

Cross-interrogatories to Thomas B. Wetmore, a witness examined in chief by F. S. Lyon, and others.

Cross-interrogatory 1. Do you not know that before the 17th September, 1863, military orders or acts of Congress were issued or executed, authorizing the empressment of iron, or iron-works within the State of Alabama, or orders that fixed the price on iron, and compelled the owner or producer to furnish iron to the Confederate States? Was it not the practice of the military officers of the Confederate States, and es-
86 pecially of those controlling or connected with the nitre and mining bureau, to take or impress, or in some manner appropriate iron from holders or producers, and only to pay for the same in confederate currency, such amounts or prices as such officers saw proper to fix? Tell all you know of the practice of such officers in respect of these matters that show or tend to show, the power and authority of such officers, and how they exercised the same.

Cross-interrogatory 2. Explain as fully as you can the authority and control had and exercised by the officers and agents of said nitre and mining bureau, over skilled white laborers who were subject to conscript laws? On what terms and conditions did such officers allow or permit iron producers or manufacturers to employ such labor? Explain fully, stating the use that was made of the powers of such officers in case an iron-maker needed such skilled labor, and refused to make iron for the Confederate States on such terms and at such prices as said government or its agents should fix. Were not the prices so fixed greatly below the prices that were paid for iron by purchasers in the market?

Cross-interrogatory 3. What office was held by William Richardson Hunt? When did he take command in the nitre and mining depart-
87 ment of the confederate service? How much of the State of Alabama was under such command or control, and what was the extent and character of the control he exercised over mining operations, and the products of mines in said department, and over persons engaged in mining? Were you not employed by said Hunt to represent the Confederate States or said Hunt in various such matters? Was it not under such employment that you became connected or ac-

quainted with the transaction involved in this suit, and which is referred to in the answers to the direct interrogatories?

Cross-interrogatory 4. Did you have personal knowledge of the interferences, threats, demands, or exactions that were made against and upon the members of the Bibb County Iron Works Company by the officers or agents of the Confederate States in respect of the production or sale of iron prior to the time you were called on to investigate the title to the property involved in this suit? If so, how and when, and in what manner did you become possessed of such knowledge? When were you so employed; was not that the first opportunity you had to gain any knowledge of the matters above mentioned? How long had the agents or officers of the Confederate States been engaged in attempts to lease or control or purchase the iron-works property of Huckabee and his associates, before you were employed or instructed to investigate the titles to said property? Do you know of anything that occurred between said parties before that time, in reference to said property,
88 or the matters above in this interrogatory called to your attention? Were not all the principal terms of the agreement or understanding in reference to said property settled between the parties before you had any connection with the matter? Do you know anything of the means that were used by the officers, as agents of the Confederate States government, to compel or to procure a deed from the parties interested in the Bibb County Iron Company to convey the lands to the Confederate States?

Cross-interrogatory 5. Do you not know that William Richardson Hunt, as an officer or agent of the Confederate States, did station guards or inspectors at said works to prevent the company from selling any iron to any person except to the agents of said government before said deed was made, and before said company agreed or consented to sell said lands?

Cross-interrogatory 6. If you say that said deed made in September, 1863, was made or was acknowledged voluntarily, and without compulsion, do you mean to say that you know the facts and circumstances that led to the making of the contract or agreement to convey, and that there was no threats, force, or compulsion used to procure the making of such contract, and do you mean to be so understood? Tell how you know the facts that you so state.

Cross-interrogatory 7. Did not the parents or some of them who conveyed said lands by said deeds say, in the conversation you have stated, that they did not want to sell said lands, and did not consent
89 to sell the same until they had been so interfered with by the officers of the Confederate States; that they could not afford to keep their property, or to work it, and that it would have ruined them to have done so; or what did said persons say touching said matter?

Cross-interrogatory 8. Do you not know that in 1863, no citizen, or combination of citizens, could have prevented the officers and agents of the Confederate States from taking any iron-works property that was needed for furnishing military supplies, or from stopping the business of any iron manufacturer who would have refused to sell his iron to the Confederate States? Were not all the mines and iron works in Central Alabama really under the military control or within the military power of the said officers and agents? Can you state any instance in which any citizen successfully resisted or withstood said officers and agents when they set about to get control of such property for the use of the Confederate States?

Cross-interrogatory 9. Tell any other fact within your knowledge

touching the subject of this suit that will benefit the claimants, C. C. Huckabee and his associates.

MORGAN & LAPSLEY,
Attorneys for Claimants.

90 In the district court of the United States for the middle district of Alabama.

THE UNITED STATES
vs.
3,690 ACRES OF LAND, &C., C. C. HUCKABEE and others, claimants.

By virtue of the commission hereto attached and which issued from the district court of the United States for the middle district of Alabama, in the foregoing stated action and proceedings, and in which said commission I am named as one of the commissioners, I have caused Thomas B. Wetmore, the witness named in said commission, and who is known to me, to come before me at the time and place hereinafter named, and the said witness, having been first duly sworn by me, testify as follows, to wit:

1. Answer to first interrogatory. I reside in the city of Selma, Ala., and having resided there between ten and eleven years. I am a lawyer by profession, and have been such twenty-seven years, or very nearly twenty-seven years.

2. Answer to second interrogatory. I prepared a deed from the Bibb County Iron Company—I believe that was the name of the corporation—and from its individual members who joined therein, to the Confederate States, in the fall of 1863, as well as I can remember the time. My recollection is that the deed was executed at the iron-works of the
91 company, in Bibb County, by the company, through one or more of its officers, and by the corporators, C. C. Huckabee, Gray Huckabee, W. M. Smith, A. K. Sheppard, and Mr. Huntington, whose first name is not now remembered. The deed embraced a great deal of land in Bibb County, Alabama. I cannot say with any positiveness where or before whom the deed was acknowledged, but as the investigation of titles took some days, and as official assistance of an acting justice of the peace, named Goode, was obtained in the perfecting of imperfect titles, and as I drew the deed in Bibb County, at the works, and as the corporators were there, and the said justice of the peace, and as the seal was on that occasion adopted, and as I have a general recollection that every preparation for final delivery of the deed, payment of the money, and consummation of the trade was completed before my return to Selma, I can state that, according to my recollection of all of the matters referred to, the deed was signed by the corporation and corporators, and sealed by the former, and acknowledged before Justice Goode, in Bibb County, Alabama. My recollection is that I took charge of the deed, but I am not certain of this, and that I delivered it to Maj. Hunt, of the mining bureau, at Selma. My recollection is that I was spoken
92 to by one or two of the corporators, to the effect that they had traded with Maj. Hunt, and that a lawyer was needed to examine and fix up the titles, and that they had suggested my name to Maj. Hunt, who would see me. Major Hunt did see me and stated that he had indicated me as the proper person, and requested me to act for the government, the fee to be paid by them (the iron company.) I consider, therefore, that I acted at the request of both parties, represent-

ing the government through Maj. Hunt; the parties selling to pay the fees for examining and perfecting titles and preparing the deed. I have not a copy of the deed by me or the original. According to my remembrance it is a deed to land and personal property, (the latter being slaves,) iron machinery, &c., with covenants of warranty, recites a consideration of six hundred thousand dollars, and has a corporation seal of the impression of the eagle side of the dollar. These matters, with what I have stated before, may serve to identify it.

3. Answer to interrogatory third. I have already stated how and by whom I was spoken to. Afterwards I met with Maj. Hunt and Col. Sheppard, and perhaps other corporators. The maj. stated that the department at Richmond wanted a valuation by referees of the property, and gave the names of referees, I being one, (I do not remember the other party, unless it was Col. W. S. Phillips,) but stated that they had really agreed upon the valuation at six hundred thousand dollars, and that it was expected the referees would make that amount their
93 report. We made valuation from the best data we had of the slaves, and thought the parties had made about a fair trade, and reported the aggregate valuations at six hundred thousand dollars. Probably a day or two was consumed in this part of the transaction. Very soon afterwards I accompanied the gentlemen named to their possessions in Bibb, that is, the iron-works, and remained there until the work of perfecting titles and executing the deed, and my drawing an abstract and opinion for the officers of government, all of which took about one week. I was paid by one of the corporators, Col. W. M. Smith, I believe, for the services.

4. Answer to fourth interrogatory. It was on the occasion of one of their meetings together at the works, in the fall of 1863, the five gentlemen mentioned being present, and representing themselves as stockholders, and the proprietors of the works. Having told them that after what Maj. Hunt had said that I was the attorney for the Confederate States, and would have to see that the titles were made good, and report on them; that I proceeded to examine into their acts of organization. Among other things I told them they had no seal, and that the record of the corporation should show sufficient to authorize conveyance. I was told by one or more, when we were all present, I believe, to prepare whatever was necessary. I drew the following resolutions, as well as I remember: One electing officers, one adopting a seal, (of the kind before referred to—this was for convenience, and prevent delay
94 of having a usual kind of seal,) and one authorizing the sale, and empowering the president to convey, in accordance with the trade mentioned. I cannot set forth these resolutions. I recollect distinctly drawing up several—all for the purpose of consummating the trade—and my recollection is that they were as stated. I cannot draw copies now; all I can say is that according to my recollection they were so drawn as to express substantially what I have stated.

5. Answer to fifth interrogatory. Before we went to Bibb, on one occasion, Col. Sheppard, speaking to Major Hunt of the trade, or of some matter about payment, said substantially, according to my best remembrance, that he, Sheppard, had been instrumental in bringing the trade about, and that he was not anxious that it should be carried out. This was said, according to my best recollection, in enforcement of some views of his as to the trade, or cash payments. While in Bibb County Mr. C. C. Huckabee furnished me with facilities for perfecting the titles of the company. My recollection is that parties were sent for to come in and execute deeds or relinquishments of dower; that a messenger was

at my disposal; that a justice of the peace was sent for, and remained several days, to act officially as occasion required, there appearing to be a good deal of confusion and incompleteness in the titles. I may also mention that I was furnished very comfortable and agreeable quarters at the house of their employee, Mr. Mott, without charge to myself; that one of the parties, I believe the president, and per-
95 haps more, stated that one reason of the sale was, that they owed a large amount of money, and that the debts had accumulated. This is my best remembrance. These are all the specific matters, coupled with what I have before stated, which now occur to me in answer to the very general question of duress, except that throughout I was treated kindly, hospitably, and offered assistance in the discharge of my labors, and that the grantors appeared cheerful and communicative with me in our interviews. This, with what I have before stated, constitutes a history of the matters and things as now enquired of; but I cannot recollect all the conversations or occurrences in detail. I know nothing of the threats inquired of. At the time, I am satisfied, there was no law or statute authorizing the seizure or impressment of the real estate in the deed. My recollection is that the legislature passed a bill, which I drew up, to allow the taking of lands in certain cases for the naval foundry at Selma; and that the impressment or condemnation of the real estate of the company would have been illegal. There were laws for the impressment of personal property, but I cannot state them accurately now, or whether they would have applied to the personal property embraced in this deed. I believe they would have applied to iron. The laws for the impressment or condemnation of lands referred to seems to be approved August, 1863, and is confined to the acquisition of lands to increase the then site of the rolling-mills and foundry which were at Selma.

6. Answer to sixth interrogatory. I had known Mr. Smith about four years; Mr. Huntington, a year or two, I suppose; Mr. Shep-
96 pard, several years; Mr. C. C. Huckabee, probably fifteen years, but had not seen much of him till recently, and Mr. Gray Huckabee a short time, I believe; but I may have been acquainted with him much longer. I do not know at this time when our acquaintance commenced. Mr. Smith is now dead. At the time of the deed I had no personal knowledge of the extent of property of the parties; but they were all reputed, I believe, to be men of property; indeed, if I mistake not, Smith and the two Huckabees were considered quite wealthy. Sheppard had been an officer in the confederate army, and a member of the legislature. Smith, I believe, had been an officer for funding the public debt, (receiver, I believe, was the title,) and member of the legislature. Probably C. C. Huckabee had been in the legislature. They were all men of intelligence, in my judgment, and so considered, and of power and influence in the community. My opinion is based upon acquaintance, their standing, repute, and associations, and reputation. I know of no ground, or fact, or circumstance calculated to produce the reasonable belief or apprehension in the mind of any of them that they were under duress or apprehension that said property would be seized or impressed, or they deprived of it, unless the existence of war, and the arbitrary and illegal proceedings of some of the officers of the confederacy gave them such apprehension. I do not refer to Major Hunt or Capt. Jones. I believe the sum agreed to be taken was a fair price therefor, in confederate money. They appeared to be satisfied with the price. The purpose for which the property was acquired was to
97 make iron for the construction of heavy artillery, at the foundry

at Selma, the iron being considered of excellent quallity for cannon. They knew the purposes for which it was bought. I did not visit the place again until after the war, and do not know how it was personally known after the purchase; but immense amounts of timber had been cut from large districts since the sale, and I know that timber was used to make coal for the works while I was there.

Answer to eighth interrogatory. I can't say that I do, or can at present.

Answers to cross-interrogatories.

1. Answer to cross-interrogatory 1. I do not know that prior to the 17th September, 1863, there were such orders or acts of Congress enquired of in reference to iron; but, according to my recollection, there was a general law on the subject of impressment; and there were also orders on the subject. There was a fixed price for iron, I believe—that is, an equal price—but whether that arose from a fixed price annexed under impressment orders to the value of the material, or to the action of officials in obedience to orders, to contract at an established price, I cannot say; my recollection is that iron was furnished at contract; that the furnaces were working for government; that government consumed almost the entire supply; that the mining bureau had, in some form, great control over these enterprises, and regulated the price; but I cannot now remember all details, and I may be mistaken in some
98 portion of my recollection. I think the officials claimed, and perhaps enforced, the right in some cases of impressing iron, as agents of the government certainly did other articles; certainly everything of use in the furtherance of *of* the war was at the time considered, in some form or other, liable to be impressed and taken by military authority; and impressment regulations were not always fairly carried out by the officers, some of whom were arbitrary and rude. Payments were in confederate money or bonds. I don't know that I can tell all I know of what may have fallen under my observation. As to the officers of the mining bureau, I don't know that I can call to mind any instance of oppression, and yet I may know such at the time; but there were instances of acts of oppression that I have been cognizant of, I believe, when parties had property taken with a base certificate. It was very common, I believe, but not with Mr. Hunt, that I know of, for government officials, armed with powers of impressment, to be rude, insulting, and arbitrary; they were so considered, at least, by the people; and some instances, I believe, came under my observation. I did believe, as a lawyer, at the time, that the officials did regard the law.

Answer to cross interrogatory 2. The nitre bureau, according to my recollection, had great control over skilled white labor, in being able to report able-bodied men to the conscript officer, and putting and end to their detail; as all able-bodied men of a certain age were liable to
99 conscription (not coming within certain exceptions,) and as the officers of the bureau had the power of detailing, or procuring details, they were enabled, in a great measure, to regulate, or at least to effect considerably, the price of iron and coal, and perhaps other things, to dispense or withhold favors, *favors*, to regulate the employment, by contractors, of white labor. I think it was owing to the conscript laws and the fear of impressment that government generally obtained by contract what it obtained at less than market-value. My recollection is that iron was difficult to be obtained by private individuals at all, and that when they bought, they bought at much higher than government prices.

3. Answer to cross-interrogatory 3. Major William Richardson Hunt was in charge of the nitre mining bureau, at this place, and I believe his jurisdiction extended over the mineral portions of Alabama, north and northeast of Selma, but I can't give its extent or boundary with definiteness. I don't remember when he took charge; it was not, however, for a year or two after the war began, as well as I remember. The character of his control, as far as it came under my observation, was firm and considerate and polite. He held power and control, and doubtless exercised it in the matter of detailing men or returning them to the conscript officer. He made contracts with parties, and did, doubtless, many things that did not come under my observation. I recollect no other instances where my services were called for by him, besides the one given, and did not become connected
100 with this matter in Bibb County under any general retainer, or any other than the employment itself.

4. Answer to cross-interrogatory 4. I had no knowledge, that I aware of, of the matters mentioned in the first paragraph of this interrogatory. I have stated when I was first employed. I know of no other opportunity of getting knowledge of the matters enquired of before then, if they existed. I do not know how long before then the officers or agents of the Confederate States had been endeavoring to lease, purchase, or control the property. I do not know what occurred before between them further than what they said of having traded, &c., and I have given the substance of that. The agreement was made before I knew of the matter or was consulted; there may have been some small matters of detail not adjusted; but the leading features of the transaction w*as* already determined on. I know of no means used to compel the conveyance.

5. Answer to cross-interrogatory 5. I know nothing of the matters enquired of in this interrogatory.

6. Answer to cross-interropatory 6. I do not say that I know all the circumstances and facts that led to the making of the agreement, or that there were no threats, force, or compulsion to procure the making of such contract. What I mean to say is, I know of none, and refer to facts stated by me as all the substantial facts that I remembered. I have not stated that I knew there were such threats, &c.

101 7. Answer to cross-interrogatory 7. I do not remember any of them saying so. My recollection is that Mr. Huckabee, the president, did, on one occasion, perhaps at the time of speaking of the debts of the company, say, in substance, that they were annoyed at Hunt's course. My remembrance is very indistinct; but there was some complaint of Major Hunt or the contract or the price. I do not remember the language as mentioned in the question. At the time enquired of the officers or agents of the Government could have taken any such iron-works property, or have stopped the business of *of* any iron manufacturer if they called on the military arm. Combination or efforts of citizens would have been unsuccessful, in my judgment, against such course, if taken. These, at least, are my opinions as to this region of country. The mines and iron-works in Central Alabama were under the control of the mining bureau; but whether that was a military control or not, I cannot say, not knowing whether they held the mines or only the contracts as their ground of authority; but the organization was more or less of a military character. As Major Hunt was a confederate officer, the mines or furnaces, or rolling-mills were worked more or less by labor detailed from the camps or the conscript bureau; and he had or was believed to have military power. I do not know of any re-

sistance being offered to the Government getting control of such property, successfully or otherwise.

9. Answer to cross-interrogatory 9. Further deponent saith not.

THOMAS B. WETMORE.

102 I, W. B. Young, one of the commissioners named in the commission hereto attached, and acting under and by virtue of said commission, which issued from the district court of the United States for the middle district of Alabama, in a certain case pending in said court, entitled as is set forth in the commencement of the foregoing deposition, do hereby certify that I caused Thomas B. Wetmore to come before me at his office on Water street, in the city of Selma, county of Dallas, and State of Alabama, on the 29th day of June, 1870; that the said witness, Thomas B. Wetmore, was first duly sworn by me to speak the truth, the whole truth, and nothing but the truth; that he testified as it is hereinbefore set down; that the testimony of said witness was reduced to writing by him, the said witness; that said witness subscribed his name to his own testimony in my presence, after the same had been read over to him by me and approved by him; that I am not related to any of the parties of the above-entitled case, either by consanguinity or affinity; that I am neither of counsel or attorney for any of said parties, nor am I interested in any way in the result of said action. I further certify that I have enveloped said deposition together with the commission, and direct and cross interrogatories, and sealed and directed the same to the clerk of the said district court of the United States, with the title of the case endorsed thereon, and deposited the same, postage paid, in the postoffice in the city of Selma, on the

103 30th day of June, A. D. 1870.

In witness of which I have hereunto set my hand and affixed my seal, June 30th, 1870.

W. B. YOUNG, [L. S.]
Commissioner.

Filed July 1st, and published by order of court July 6th, 1870.

E. C. V. BLAKE,
Clerk, &c.

Amended answer to C. C. Huckabee.

In the district court of the United States for the middle dist. of Alabama.

The claim of Caswell C. *C.* Huckabee to the lands hereinafter described, and his answer to the original and amended libels filed in said court in the name of the United States of America against certain lands therein described, called the Bibb County Iron Works.

The said Caswell C. Huckabee, intervening for his own right in and to the lands hereinafter described, being a part of the lands described in the amended libel filed in this cause, saith that he is the owner of said lands hereinafter described, and that no other person within the knowledge of this claimant hath any lawful title to the same, or to any part thereof. Said lands are described as follows, to wit:

The northeast quarter of section four, (4;) all of section three,

104 (3,) except the east half of the southeast quarter of the northeast quarter; the northwest quarter of the northwest quarter, the west half of the southwest quarter, the west half of the northeast

quarter, the southeast quarter of the northeast quarter, the east half of the southwest quarter, the northeast quarter of the northwest quarter, the east half of the southeast quarter of the northwest quarter, and the southeast quarter of section two, (2;) the west half of the northwest quarter, the west half of the southwest quarter, the east half of the northwest quarter, the north half of the southeast quarter, the northeast quarter of the southwest quarter, and the northeast quarter of section eleven, (11;) the east half of the southeast quarter and *and* the northeast quarter of section 10; the northwest quarter of the southwest quarter of section (12,) twelve, township twenty-three, (23,) range eleven (11) east; the south half of the southeast quarter of section thirty-three, (33;) the southwest quarter, the south half of the southeast quarter, the northwest quarter of the southeast quarter of section thirty-four, (34;) the southwest quarter of the southwest quarter of section thirty-five, (35;) the southwest quarter of the southeast quarter of section thirty-six, (36,) township twenty-four, range 11 east.

And said Caswell C. Huckabee, for answer to said information, saith:

1st. That he did engage in the rebellion against the United States in the manner stated in said libel of information; but afterwards, on the 12th day of September, 1865, the President of the United States, in pursuance of the constitutional laws of the *of the* United States,
105 granted to him full pardon and amnesty from and against all punishments, and penalties, and forfeitures by him incurred, by reason of his participation in said rebellion, or his connection therewith; and this defendant accepted said pardon on the terms *and this defendant accepted said pardon on the terms* and conditions therein prescribed, and took the oath of allegiance and amnesty therein prescribed, and filed his written acceptance of said pardon in the office of the Secretary of State of the United States, in full compliance with the terms of said pardon, whereby the said Caswell C. Huckabee was fully relieved and discharged from all the liabilities to punishment, and from all the forfeitures and penalties so incurred by him, and was fully restored to all his rights of property not excepted in said warrant of pardon, which is now here shown to this honorable court, together with his acceptance thereof.

2. And for further answer to said libel and amended libel, said Caswell C. Huckabee sayeth that, on the 9th day of December, 1864, he signed a writing purporting to be a deed of remise, release, and quitclaim from him to the Confederate States of America, in consideration of the sum of five dollars paid to him, of all his right, title, claims, and interest in and to the lands hereinbefore described, and on said day he also signed a paper purporting to be a sale of all the timber grown and to be grown on seventeen hundred acres of said land. Respondent also states that he did accept, from the persons into whose hands he
106 placed said deeds, treasury notes of the said Confederate States issued to circulate as money, to the amount of twenty-one thousand two hundred and fifty-five dollars, or thereabouts, said money having been handed to him by said persons acting as the agents of the said Confederate States, which was intended to be a payment for said lands and the timber on the said seventeen hundred acres thereof. And this respondent avers that said so-called Confederate States was then no lawful government or corporation, or association of individuals, but was an unlawful combination formed within the United States to wage war of rebellion against the laws and Government of the United States, and it had no rightful existence or authority, but it was so powerful as a military organization, and had such authority over the people of the

State of Alabama at and before the date of said paper-writings, that all persons within said State were compelled to submit to said authority, whether exercised under the forms of military dictation or of civil procedure.

Respondent further states that he did not desire to sell said lands or said timber to the said Confederate States or its agents, and was often requested to do so, and as often he refused; and thereupon, when it became necessary that the military authorities of said Confederate States should have said land and timber to enable them to make iron for the use of said Confederate States, one Moses J. Wicks and one William Richardson Hunt, officers in military commission and com-
107 mand under the authority of said Confederate States, demanded of respondent that he should convey said lands and timber to said Confederate States, and that if he refused to do so the said so-called government would impress the same, and would take the same into possession and appropriate the same to public use for said government, and would pay to respondent only such compensation therefor as persons selected by the agents of said government should declare to be just; and said officers being in military command, and having soldiers subject to their authority, respondent well knew that he could not resist their authority and power, and thereupon protesting against their right in the premises, and to save himself as far as he could and as long as he could against loss, he agreed with said Moses J. Wicks as to the sum of confederate money that should be paid him for said land and timber, and signed said paper-writings; and he thereupon denies that he did voluntarily execute said writings, or that he voluntarily sold or conveyed said lands or said timber to said Confederate States, but the same were signed under duress, and to comply with the demands of an unlawful power and authority which he had no means to resist. And this respondent further sayeth that said so-called government of the Confederate States had no power or authority under the laws of the United States or of the Constitution thereof, nor
108 even under its own laws and constitution, so to take the property of private persons for public use in the manner in which its said agents proceeded to take the property of this respondent. Wherefore this respondent sayeth that said paper purporting to be a deed of conveyance of said lands to said Confederate States of America, and said paper-writing purporting to convey the timber or a part of said lands to said Confederate States are void; and he further sayeth that at no time has he made any other conveyance of said lands *to said Confederate States are void; and he further sayeth that at no time has he made any other conveyance of said lands* or said timber to said Confederate States or any agent thereof.

3. And said respondent denies that said lands herein mentioned were ever in fact captured by the military authorities of the United States, or that said military authorities ever took possession of the same before the libel of information in this case was filed.

4. And respondent denies upon information and belief that said lands were ever seized under any warrant of seizure or by any authority of law or otherwise, by the marshal of the United States, as is alleged in said libel and amended libel filed in this cause.

Wherefore this respondent prays judgment and decree of this honorable court, that his title to said lands in this claim and answer above described be rendered and confirmed, and that he be placed in possession of the same.

JOHN T. MORGAN.
J. Q. SMITH.

109 In the district court of the United States in open court.

Comes Casswell C. Huckabee, the claimant, and respondent above named, and being duly sworn, makes oath that the matters stated in said claim and answer are, when stated as of his own knowledge, true, and when stated on information and belief, he believes the same to be true.

C. C. HUCKABEE.

Sworn and subscribed to before me, this 26th May, 1870, in open court by C. C. Huckabee.

E. C. V. BLAKE, *Clerk.*

The plaintiff and F. S. Lyon and associates introduced in evidence the following deed, No. 1, executed by the Bibb County Iron Company et al. to the Confederate States.

THE STATE OF ALABAMA, *Bibb County:*

This indenture, made and entered into this 17th day of September, A. D. eighteen hundred and sixty-three, between the Bibb County Iron Company, a corporation in said State chartered by the legislature thereof, and Caswell C. Huckabee, Alexander K. Sheppard, Gray Huckabee, Washington M. Smith, Alfred S. Huntington, corporators, being all the stockholders of said company, and citizens of the State of Alabama, of the first part, and the Confederate States, of America, of the second part, witnesseth:

That whereas, at a meeting of said stockholders, all being pres-
110 ent, held September 9th, 1863, it was resolved unanimously that the president of this company be authorized, for the sum of six hundred thousand dollars, to sell to the Confederate States all its lands, negroes, ore, stock on hand, mules, oxen, ore-beds, provisions, forage, wood, coal, tools, and its property of all kinds whatsoever, belonging to the company, except the pig metal on hand, and to execute, on behalf of the company, deeds of warranty or otherwise; and whereas the parties of the second part agree to pay the said sum for said property, provided the said stockholders unite in the conveyance: Now, therefore, in consideration of the premises, and in consideration of the sum of six hundred thousand dollars in hand paid by the parties of the second part, the receipt whereof is hereby acknowledged, the parties of the first part have given, granted, bargained, sold, enfeoffed, and conveyed, and by these presents, do give, grant, bargain, sell, enfeoff, and convey unto the parties of the second part, their assigns forever, the following real estate, situated in the said county of Bibb, being in the Tuscaloosa land district to wit: The west half of the northeast quarter, the east half of the northwest quarter, and the southwest quarter of the northwest of section 34, township 24, of range 11 east: also the southwest quarter of the southwest quarter of section 26; the northwest quarter of the northwest quarter of section 35; the northeast quarter of the northeast quarter, and the southeast quarter of the southeast quarter of section 34—all in same township and range: also the follow-
ing parcels of lands, to wit: Commencing at the half-section stake
111 of south boundary line of section 19 in township 24, of range 12 east, running east upon said boundary line seventy yards; thence north to the middle of Mahone's Creek; thence down said creek, to dividing line between the eastern and western halves of the section; thence south upon said line to the beginning: also, the southwest quarter of the northeast quarter, the southeast quarter of the northeast quarter,

the northeast quarter of the southwest quarter, and the southeast quarter of the northwest quarter of section 28, in township 24, of range 11 east: also the south half of the southwest quarter of section 22, and the southeast quarter of the southeast quarter of section 21, in same township and range: also, the south half of section 27; the north half of the northeast quarter of section 33; the southeast quarter of section 28; the east half of the northwest quarter of section 35; the northeast quarter of the northeast quarter of section 27; the south half of the northeast quarter of section 27; the west half of the northeast quarter of section 35; so much of the east half of the northeast quarter of section 35, and of the west half of the northwest quarter of section 36, as lies north of the new road running from Ashby depot to the furnaces of the company—all in same township and range: also a piece of land in the southeast part of the east half of the southwest quarter of section 19 in township 24, of range 12 east, on which is the rolling-mill, bounded as follows: Beginning at the southeast corner of said west half, running thence west on the section line fifty-seven poles to
112 a stake; thence *thence* north fifty-seven poles to a stake; thence east fifty-seven poles to the east line of said tract; thence south on said line to the beginning, making a square block of twenty acres, more or less: also, the southeast quarter of the southwest quarter of section 26 in township 24, range 11 east: also, the southeast quarter of section 26; the southwest quarter, the west half of the southeast quarter, the northeast quarter of the southwest quarter, and the southwest quarter of the southwest quarter of the northwest quarter of section 25—all in township 22, of range 11 east: also, the northwest quarter of the southwest quarter, and the west half of the northwest quarter, and the northeast quarter of the northwest quarter of section 26; the south half of the southwest quarter of section 26; the south half of the southwest quarter of section 23, and the southeast quarter of the southeast quarter of section 22, in same township and range, with the following reservation which J. N. Smith made in his conveyance to the Bibb County Iron Works Company, and which are therefore excepted from this conveyance, to wit: The tillable land and timber on the southeast quarter of section 22, and the tillable land on the southwest quarter of the southwest quarter of section 23, and also the use of whatever iron-ore on any of the lands in this number, may be necessary for the use of said Smith at his forge on 6 Mile Creek in said Bibb County; the whole of said lands heretofore mentioned being 23,000 acres, without
113 timber or tillable land reservations, and 80 acres with such reservations: also, the iron-ore on the northwest quarter of the northeast quarter of section 27, in same township and range: also, all the iron-ore with all the rights proper to be enjoyed in mining and removing the same, on that part of the following land which lies south of the Little Cahaba, (not known to extend the right of way over the cleared land, but over the land not in cultivation,) to wit: The northeast quarter, the west half of the southeast quarter, the northeast quarter of the southeast quarter, and the northwest quarter of section 22; and the northeast quarter and the northwest quarter of the southeast quarter, and the southeast quarter of the southwest quarter of section 21—all in same township and range; the total ore privileges thus conveyed being within the scope of 640 acres, more or less: also the timber for coaling purposes, that is to say, all the timber, except oak-timber, the hickory-timber, enough pine-timber to fence the cleared land on the tract embraced in this number, enough coal-timber for one blacksmith-shop, and all pines that will square twelve inches at the butt, on the following

lands: The southwest quarter of the northwest quarter, the southeast quarter of the northwest quarter, the northeast quarter of the southwest quarter, the southwest quarter of the northeast quarter, and the east half of the northeast quarter of section 5, in township 23, and range 11 east, being the coaling timber on 240 acres, more or less: also all the mill-timber of every description fit to saw into lumber on
114 the southeast quarter of the northwest quarter, and the northeast quarter of the southwest quarter of section 26—in township 24, and range 11 east, being 80 acres more or less—the whole of the lands thus conveyed, and on which ore or timber are conveyed, and which are conveyed with any reservation amounting to 3,340 acres, more or less: also, the following negroes, John Anderson, aged 35; Dennis, aged 38; George, about thirty; Charles, about 47; Penny, about 40; Corvey, about 17; Mathew, about 35; Mose, about 18, and Esquire, about 30 years: also 70 mules, 41 oxen, 15 wagons, 20 carts, 20 wheelbarrows, 10 wood-sides, with iron tools complete for coaling, ore-digging, and so forth; 200 axes, 4 full sets of blacksmith tools; all the corn, bacon, sugar, salt, all provisions or forage on hand; all the ore, wood, coal, tools, machinery, and implements of all kinds pertaining to the business of said company, and all other personal property connected therewith, except the pig-iron and scrap-iron on hand: To have and to hold to them, the parties of the second part, and their assigns forever, to their own use and behoof, with all privileges, easements, rights, tenements, annuities, hereditaments, fixtures, and franchises, to the said real estate in any wise belonging or appertaining. And the said parties of the first part, for themselves, their heirs and assigns, executors and administrators, covenant with the parties of the second part, and their assigns forever, that they, the parties of the first part, are lawfully seized in fee of said lands and hereditaments, and are
115 the absolute owners of said personal property, and that they have the right to make this conveyance, and that the whole of said property is free from all incumbrances, and that the parties of the second part, their agents, representatives, and assigns, shall now and at all times enter upon and enjoy the same, and have peaceful possession thereof, as against any act or thing done, or hereafter to be done, by the said party of the first part, their heirs, or assigns, or any of them; and that the parties of the first part, their heirs and assigns, will forever warrant and defend the title to the property hereby conveyed against the lawful claim or claims of all persons whatsoever, and of the State of Alabama, as an indefeasible estate in fee-simple, free from all incumbrances, and if there be any other property, rights, or privileges belonging to said company not embraced in the foregoing conveyance, the parties of the first part hereby convey the same to the parties of the second part, their heirs, and assigns forever, except the metal already reserved, and any debts that may be due said company.

In witness whereof the parties of the first part, the said corporation, by its seal and the signature of its president, do hereunto set their hands and seals on the day and in the county first aforesaid.

On the 16th line of second page is an erasure of the word "south," and an interlineation of the word "north;" on the third page, 17th line, the word "west" is obliterated by the word "east," written over
116 it; on the fifth page, third from last line, there is an obliteration between the words "north" and "east;" on the seventh page, 4th line, the word "same" is obliterated; on the 5th line the words "twenty-three," and the words "eleven east," are inserted; on the same page, 12th line, an erasure of the word "same," and an interlineation of the

words "twenty-four," and an extension at the end of the line of "eleven east."

BIBB COUNTY IRON COMPANY.
By CASWELL C. HUCKABEE, *President.*
CASWELL C. HUCKABEE. [L. S.]
A. K. SHEPPARD. [L. S.]
WASHINGTON M. SMITH. [L. S.]
ALFRED S. HUNTINGTON. [L. S.]

STATE OF ALABAMA, *Bibb County:*

Before me, P. Wallace, justice of the peace for said county, comes Caswell C. Huckabee, president of the Bibb County Iron Company, and said Huckabee, individually, and Alfred S. Huntington, Gray Huckabee, Washington M. Smith, and Alexander K. Sheppard, all of whom are personally known to me, and whose names are signed to the foregoing deed, and severally (the said Caswell C. Huckabee acknowledging also as president as aforesaid) acknowledged that, being informed of the contents, they executed the same voluntarily on the day of its date.

Given under my hand this 17th day of September, A. D. 1863.

Take notice that the foregoing deed was filed for record in this office, on the 25th day of November, 1863, and was recorded same day in book 1, of deeds.

117 JACKSON GARDNER,
Judge of Probate.

STATE OF ALABAMA, *Bibb County:*

I, Jackson Gardner, judge of the probate court for said county, hereby certify that the foregoing is a true copy from the records of my office.

Given under my hand this 4th day of November, 1867.

JACKSON GARDNER,
Judge of Probate.

STATE OF ALABAMA, *Bibb County:*

I, Jackson Gardner, presiding judge of the court of probate for the county of Bibb, in the State aforesaid, hereby certify that the foregoing pages are a true copy of the said deed and certificates thereon, and a true copy of the record thereof, in my office; and I further certify that I am the sole judge and clerk of said court.

Given under my hand and seal of office of the probate court of said county, at office in Centreville this May the 1st, 1868.

[SEAL.] JACKSON GARDNER,
Judge of Probate.

[One-dollar rev. stamp.]

On behalf of the plaintiff and F. S. Lyon and associates, the following deed, No. 2, executed by C. C. Huckabee to the Confederate
118 States, was introduced in evidence:

Know all men by these presents that I, C. C. Huckabee, of the county of Bibb, and State of Alabama, in consideration of the sum of five dollars to me paid by the Confederate States of America, *the sum of five dollars to me paid by the Confederate States of America*, the receipt

of which is hereby acknowledged, do hereunto grant, remise, release, and forever quit-claim unto the said Confederate States of America and their assigns, all my right, title, interest, estate, claim, and demand, both in law and in equity, and as well in possession as in expectancy, of, in, and to all that tract or parcel of land lying and being in Bibb County, Alabama, described as follows, to wit: The northeast quarter of section 4, (four;) all of section three, (3,) except the east half of the southeast quarter of the northeast quarter; the northwest quarter of the northwest quarter, the west half of the northeast quarter, the southeast quarter of the northeast quarter, the east half of the southwest quarter, the northeast quarter of the northwest quarter, the east half of the southeast quarter of the northwest quarter, and the southeast quarter of section two, (2;) the west half of the southwest quarter, the east half of the northwest quarter, the north half of the southeast quarter, the northeast quarter of the southwest quarter, and northeast quarter of section eleven, (11;) the east half of the southwest quarter, and the northeast quarter of section 10, (ten;) the northwest quarter of the southwest quarter of section twelve, (12;) township twenty-three, (23,) range eleven (11) east; the south half of the southeast quarter of
119 section thirty-three, (33;) *the southeast quarter*, the south half of the southeast quarter, the northwest quarter of the southeast quarter of section thirty-four, (34;) the southwest quarter of the southwest quarter of section thirty-five, (35;) the southwest quarter of the southeast quarter of section thirty-six, (36,) township twenty-four, (24,) range eleven (11) east, with all and singular the hereditaments and appurtenances thereunto belonging. And I, the said C. C. Huckabee, for myself and my heirs, executors, and administrators, do covenant with the said Confederate States and their assigns, that the premises are free from all incumbrances made or suffered by me; and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said Confederate States and their assigns forever, against the lawful claims of all persons claiming by, through, or under me, but against none other.

In witness whereof I have hereunto set my hand and seal this 9th day of December, A. D. 1864.

C. C. HUCKABEE.

Witness:
GEORGE M. DUSKIN.
E. M. MEDLEY.

The words "and the northwest quarter of the southeast quarter," in the eighteenth and nineteenth lines from the top of the preceding page, were erased before this deed was signed.

GEORGE M. DUSKIN.

STATE OF ALABAMA, *Dallas County:*

120 I, S. W. John, a notary public in and for said county and State, hereby certify that E. N. Medley, a subscribing witness to the foregoing conveyance, known to me, appeared before me this day, and being sworn, stated that C. C. Huckabee, the grantor in the conveyance, voluntarily executed the same in his presence and in the presence of the other subscribing witness on the day the same bears date; that he attested the same in the presence of the grantor and of the other witness, and that such other witness subscribed his name as a witness in his presence.

Given under my hand and seal notarial this 26th day of March, A. D. 1866.

[L. S.] S. W. JOHN,
Notary Public.

THE STATE OF ALABAMA, *Bibb County:*

I, Jackson Gardner, judge of probate for said county, hereby certify that the foregoing conveyance was filed in my office for record March 29th, 1866, and recorded same day in Book 1 of deeds, pages 641 and 642; and I further certify that it has on it $\frac{50}{100}$ dollars internal-revenue stamp.

JACKSON GARDNER,
Judge of Probate.

On behalf of the plaintiff, F. S. Lyon, and associates, the following deed, No. 3, executed by Thomas H. Alexander to the Confederate States, was introduced in evidence:

121 This indenture, made and entered into between Thomas H. Alexander, of the county of Bibb and State of Alabama, of the first part, and the Confederate States of America, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of three thousand two hundred dollars to him paid, the receipt of which is hereby acknowledged, has bargained and sold, and do' by these presents bargain and sell to the Confederate States all the timber now on the following-described land, to wit: The northeast quarter of section twenty-five, (25,) the east half of the southeast quarter of section twenty-four, (24,) range eleven east; also, the northwest quarter of the northwest quarter of section thirty, the southwest quarter of the southwest quarter of section nineteen, township twenty-four, range twelve (12) east, lying and being in Bibb County, Alabama: To have and to hold the right and privilege of cutting and transporting all said timber now on said land, with the privilege of ingress and egress on said land, with all the right and privilege to cut and transport said timber, or to use it or burn it on said land, to the only proper use and behoof of the party of the second part and their assigns, the fee-simple in said land being retained to the party of the first part; and the party of the first part covenants to and with the party of the second part and their assigns, that he is lawfully seized in fee of said lands and timber thereon; that the same is unincumbered, and that he will forever warrant and defend the title to said timber, with the privilege herein con-

122 veyed, against the lawful claims of all persons whatsoever.

In witness whereof the party of the first part has executed this deed this 28th December, 1864.

THOMAS H. ALEXANDER. [L. S.]

Witness:
A. E. MOTT.
A. B. ELLIS.

STATE OF ALABAMA, *Dallas County:*

I, S. W. John, a notary public in and for said county and State, hereby certify that A. E. Mott, a subscribing witness to the foregoing conveyance, known to me, appeared before me this day, and being sworn, stated that Thomas H. Alexander, the grantor of the conveyance, voluntarily the same in his presence, and in the presence of the other subscribing witness, on the day the same bears date; that he attested

the same in the presence of the grantor and of the other witness; that such other witness subscribed his name as a witness in his presence.

Given under my hand this 14th day of March, 1866.

S. W. JOHN,
Notary Public.

Take notice that the foregoing conveyance was filed in my office for record on the first of June, and recorded the fifteenth of June, 1866.

JACKSON GARDNER.
Judge of Probate.

STATE OF ALABAMA, *Bibb County:*

123 I, Jackson Gardner, presiding judge of the court of probate in and for the county of Bibb and the State aforesaid, hereby certify that the foregoing pages are a true copy of *of* the said deed and certificates thereon, and a true transcript of the record thereof in my office; and I further certify that I am sole judge and clerk of said court.

Given under my hand and seal of the probate court of said county, at office in Centreville, May 1st, 1868.

[SEAL.] JACKSON GARDNER,
Judge of Probate.

[$1.00 internal-rev. stamp.]

On behalf of the plaintiff, F. S. Lyon, and associates, the following deed No. 4, executed by Thomas H. Alexander, of the county of Bibb, and State of Alabama,

of the first part, and the Confederate States of America, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of 100 dollars, to him paid by the party of the second part, the receipt of which is hereby acknowledged, has bargained and sold, and do by these presents bargain and sell to the Confederate States of America and their assigns, the following tract or parcel of land, lying and being in Bibb County, Alabama, described as follows, to wit: A fractional part, being three-fourths, of the southeast quarter of the southwest quarter—say thirty acres—in the southern portion of the said forty acres, section nineteen, (19,) township twenty-four, (24,) range twelve
124 (12) east, with all the privileges and appurtenances thereunto belonging: To have and to hold the above-granted premises unto the said party of the second part and their assigns, to his and their own proper use, benefit, and behoof forever; and the said party of the first part, for himself, his heirs, executors, administrators, and assigns, covenant' to and with the said party of the second part and their assigns, that he is lawfully seized, in fee-simple, of the premises aforesaid; that they are free from all incumbrances; that he has good right to sell the same to the said party of the second part and their assigns forever, as aforesaid; and that he will, and his heirs, executors, and administrators shall, warrant and defend the same to the said party of the second part and their assigns, against the lawful claims of all persons whatsoever.

In witness whereof the said party of the first part has hereunto set his hand and seal this 28th day of December, A. D. 1864.

THOMAS H. ALEXANDER. [L. S.]

Witness:
A. E. MOTT and
A. B. ELLIS.

STATE OF ALABAMA, *Dallas County:*

I, S. W. John, a notary public in and for said county and State, hereby certify that A. E. Mott, a subscribing witness to the foregoing conveyance, known to me, appeared before me this day, and being sworn, stated that Thomas H. Alexander, the grantor in the conveyance,
125 voluntarily executed the same in his presence, and in the presence of the other subscribing witness, on the day the same bears date; that he attested the same in presence of the grantor and of the other witness, and that such other witness subscribed his name as a witness in his presence.

Given under my hand this 14th March, 1866.

S. W. JOHN,
Notary Public.

I hereby certify that the foregoing conveyance was filed in office for record on the 29th March, 1866, and recorded on the 4th of April, 1866, and has on it fifty cents revenue stamp.

JACKSON GARDNER,
Judge of Probate.

STATE OF ALABAMA, *Bibb County*:

I, Jackson Gardner, presiding judge of the court of probate in and for the county of Bibb and the State aforesaid, hereby certify that the foregoing pages are a true copy of the said deed and certificates thereon, and a true transcript of the record thereof in my office; and further certify that I am sole judge and clerk of said court.

Given under my hand and seal of office, at office, this 1st May, 1868.

[SEAL.] JACKSON GARDNER,
Judge of Probate.

[One dollar revenue stamp.]

On behalf of the plaintiff and F. S. Lyon and associates, the
126 following deed, No. 5, executed by David Lindsay and wife to the Confederate States, was introduced in evidence:

This indenture, made and entered into between David Lindsay and his wife, Susan W. Lindsay, county of Bibb, State of Alabama, of the first part, and the Confederate States of America, of the second part, witnesseth: That the said parties of the first part, for and in consideration of the sum of one thousand dollars to them paid, the receipt of which is hereby acknowledged, have bargained and sold, and do hereby bargain and sell to the Confederate States all the iron-ore, lime-rock, and timber now on and hereafter produced on the following-described land, to wit: The southwest fourth of the northwest fourth, the southeast fourth of the northwest fourth, and the northwest fourth of the northeast fourth of section twenty-seven, township twenty-four, range eleven east, lying and being in Bibb County, Alabama.

The said parties of the first part, however, reserve all the timber upon said land lying on the north side of Centreville road, and also the lime-rock on the northwest fourth of the northeast fourth of section twenty-seven, township twenty-four, range eleven east: To have and to hold the right and privilege of mining, cutting, and transporting all of said iron-ore, lime-rock, and timber, now and hereafter, perpetually on said lands,
with the privilege of ingress and egress on said land, with all the
127 right to *to* mine, cut, and transport said iron-ore, lime-rock, and timber, or to use or burn them on said land, except the lime-rock

and timber mentioned in the above reservation, to the only proper use and behoof of said party of the second part, and their assigns forever, the fee-simple in said land being retained to the said parties of the first part. And the parties of the first part covenant to and with the parties of the second part, and their assigns, that they are lawfully seized in fee of said land, iron-ore, lime-rock and timber thereon; that the same is unincumbered, and that they will forever warrant and defend the title to the said iron-ore, lime-rock, and timber, with the privileges herein conveyed, against *against* the claims of all persons whatsoever, excepting, of course, the lime-rock and timber mentioned in the preceding reservation.

In witness whereof the parties of the first part have executed this deed, this the 13th day of July, 1864.

SUSAN WEST her mark LINDSEY. [L. S.]

DAVID LINDSEY. [L. S.]

Witness:
A. E. MOTT.
J. A. HERNDON.

THE STATE OF ALABAMA, *Bibb County:*

128 Personally appeared before me, M. J. Peters, an acting justice of the peace in and for said county, A. E. Mott, who, being duly sworn, deposeth and sayeth that he, with J. A. Herndon, the other subscribing witness, saw David Lindsey and Susan West Lindsey sign the within deed voluntarily, after being informed of its contents, on the day the same bears date.

Given under my hand and seal this 12th day of September, 1864.

JACKSON GARDNER,
Judge of Probate.

THE STATE OF ALABAMA, *Bibb County:*

I, Jackson Gardner, judge of the probate court of said county, hereby certify that the foregoing and above contains a true copy from the records of my office.

Given under my hand at Centreville, in Bibb County, this 4th day of November, 1867.

JACKSON GARDNER,
Judge of Probate.

STATE OF ALABAMA, *Bibb County:*

I, Jackson Gardner, presiding judge in and for the county of Bibb, and State aforesaid, hereby certify that the foregoing pages are a true copy of the said deed and the certificates thereon, and a true transcript of the record thereof in my office; and I further certify that I am sole judge and clerk of said court.

129 Given under my hand and seal of the probate court of said county, at office in Centreville, this 1st day of May, A. D. 1868.

[SEAL.] JACKSON GARDNER,
Judge of Probate.

[$1.00 Alabama State stamp.]

On behalf of the plaintiff and F. S. Lyon and associates, the following deed, No. 6, executed by D. W. Prentice to the Confederate States, was introduced in evidence.

This deed, made and entered into between Dan. W. Prentice, of the county of Bibb and State of Alabama, of the first part, and the Confederate States of America, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of two thousand nine hundred and thirty-six dollars and twenty-five cents, ($2,936.25,) to him paid by the said party of the second part, the receipt of which is hereby acknowledged, has bargained and sold, and does by these presents bargain and sell to the Confederate States of America all the timber now on the following-described lands, to wit: On one hundred and ninety-five and three-quarter acres of land lying south of the tram-road, leading from the Bibb County Iron-Works to the rolling-mill, all of said land lying and being in Bibb County, Alabama: To have and to hold the aforesaid timber, and the right and privilege of ingress and egress on said land, with all the right to cut and transport said timber, or to use it or burn it on said land, to the only proper
130 use and behoof of the said party of *of* the second part and their assigns, the fee-simple of said land being reserved to the party of the first part. And the party of the first part covenant' to and with the said party of the second part and its assigns, that he is lawfully seized in fee of said land and timber thereon; that the same is unincumbered, and that *and that* he will forever warrant and defend the title to said timber, with the privilege herein conveyed, against the lawful claims of all persons whatsoever.

In witness whereof the party of the first part have executed this deed, this eleventh day of November, A. D. 1864.

D. W. PRENTICE. [L. S.]

Witness:
GEO. W. DUSKIN and
A. E. MOTT.

STATE OF ALABAMA, *Dallas County:*

I, S. W. John, a notary public in and for said county and State, hereby certify that A. E. Mott, a subscribing witness to the foregoing conveyance, known to me, appeared before me this day, and being sworn stated that D. W. Prentice, the grantor in the conveyance, voluntarily executed the same in his presence and in the presence of the other subscribing witness, on the day the same bears date; that he attested the same in the presence of the grantor and of the other witness, and that such other witness subscribed his name as a witness in his presence.

131 Given under my hand and seal *nationally* this 29th day of March, 1866.

S. W. JOHN,
Notary Public.

I hereby certify that the foregoing conveyance was filed in my office for record 29th March, 1866, and recorded 4th April, 1866; and I further certify that there fifty cents internal-revenue stamps on same.

JACKSON GARDNER,
Judge of Probate.

STATE OF ALABAMA, *Bibb County:*

I, Jackson Gardner, judge of the court of probate in and for the county of Bibb, in the State aforesaid, hereby certify that the foregoing pages are a true copy of the said deed and certificates thereon, and a

true transcript of the record thereof in my office; and I further certify that I am sole judge and clerk of said court.

Given under my hand and seal of the probate court of said county at office in Centreville, this May 1st, A. D. 1868.

[SEAL.] JACKSON GARDNER,
Judge of Probate.

[$1.00 Alabama State stamp,]

On behalf of the plaintiff and F. S. Lyon and associates, the following deed, No. 7, executed by John and William Garner to the Confederate States, was introduced in evidence:

This indenture, made and entered into between John Garner and William Garner, of the county of Bibb and State of Alabama, of
132 the first part, and the Confederate States of America, of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of fifteen hundred ($1,500) dollars to them paid, the receipt of which is hereby acknowledged, have bargained and sold, and do hereby bargain and sell to the Confederate States of America all the iron-ore, lime-rock, and timber, now on or hereafter produced on the following-described lands, to wit:

The southeast quarter of the southwest quarter, and the west half of the southeast quarter of section twenty-four, (24,) township twenty-four, (24,) range eleven (11) east, containing one hundred and twenty acres, more or less, lying and being in Bibb County, Alabama: To have and to hold the aforesaid iron-ore, lime-rock, and timber, and the right and privilege of mining, cutting, and transporting said iron-ore and lime-rock and timber, now and hereafter perpetually, on said land, with the privilege of ingress and egress on said land, with all the right to mine, cut, and transport said iron-ore, lime-rock, and timber, to use or burn it on said land, to the only proper use and behoof of the said party of the second part, and their assigns forever, the fee-simple in said lands being reserved to the said parties of the first part. And the parties of the first part covenant to and with the said party of the second part and their assigns, that they are lawfully seized in fee of said lands, iron-ore, lime-rock, and timber *these are;* that the same is unincumbered, and that they will forever warrant and defend the title to said
133 iron-ore, lime-rock, and timber, with the privileges herein conveyed, against the lawful claims of all persons whatsoever.

In witness whereof the parties of the first part have executed this deed this 21st day of September, A. D. 1864.

JOHN GARNER. [L. S.]
WILLIAM GARNER. [L. S.]

Witness:

GEORGE M. DUSKIN and
A. E. MOTT.

THE STATE OF ALABAMA, *Bibb County:*

Personally appeared before me, P. Wallace, an acting justice of the peace in and for said State and county, A. E. Mott, one of the subscribing witnesses, who being duly sworn, deposeth and sayeth on oath, that he saw the within deed signed on the day the same bears date.

Given under my hand this 25th day of October, A. D. 1865.

P. WALLACE,
Justice of the Peace.

I hereby certify that the foregoing conveyance was filed in office for record on the 29th day of March, 1866, and recorded 3rd of April, 1866. I further certify that it has on it $1.50 internal-revenue stamps.

JACKSON GARDNER,
Judge of Probate.

STATE OF ALABAMA, *Bibb County:*

I, Jackson Gardner, presiding judge of the court of probate in and for the county of Bibb, in the State aforesaid, hereby certify that the foregoing pages are a true copy of the said deed and the certificates
134 thereon, and a true transcript of the record thereof in my office; and I further certify that I am sole judge and clerk of said court.

Given under my hand and seal of the probate court of said county, at office in Centreville, May the 1st, 1868.

[SEAL.] JACKSON GARDNER,
Judge of Probate.

[$1.00 Alabama State stamp.]

On behalf of the plaintiff and F. S Lyon and associates, the following deed, No. 8, executed by Pleasant M. Foucher to the Confederate States, was introduced in evidence:

This indenture, made and entered into between Pleasant M. Foucher, of the county of Bibb and State of Alabama, of the first part, and the Confederate States of America, of the second part, witnesseth:

That the said party of the first part, for and in consideration of the sum of eleven hundred and twenty dollars to him paid, the receipt of which is hereby acknowledged, has bargained and sold, and does hereby bargain and sell, to the Confederate States, all the timber now on the following-described land, to wit: The south half of the northwest quarter of section thirty-three, township twenty-four, range eleven east; and all of the timber south of the State road on the south half of the southwest fourth of section twenty-eight, township twenty-four,
135 range eleven east, being the timber on one hundred and twelve acres, more or less, lying and being in Bibb County, Alabama: To have and to hold the right and privilege of cutting and transporting all said timber now on said land, with the privilege of ingress and egress on said land, with all the right to cut and transport said timber, or to use or burn it on said land, to the only proper use and behoof of the said party of the second part and their assigns, the fee-simple in said lands being retained to the said party of the first part. And the party of the first part covenant' to and with the party of the second and their assigns, that he is lawfully seized in fee of said land, and timber thereon; that the same is unincumbered, and that he will forever warrant and defend the title to the said timber, with the privilege herein conveyed, against the claims of all persons whatsoever.

In witness whereof the party of the first part has executed this deed, this 18th day of July, 1864 A. D.

P. M. FOUCHER. [L. S.]

Witness:

A. E. MOTT, and
GEORGE M. DUSKIN.

STATE OF ALABAMA, *Bibb County:*

Personally appeared before me, W. J. Peters, an acting justice of the peace, A. E. Mott, a subscribing witness to the above deed, who being

duly sworn, deposeth and saith that he, with the other subscribing witness, G. N. Duskin, saw P. M. Foucher sign the within deed voluntarily, after being informed of the contents, on the day the same bears date.

A. E. MOTT.

136 Given under my hand this 12th day of September, 1864.

W. J. PETERS, *J. P.*

Take notice, the foregoing deed was filed in my office for record the 12th day of September, 1864, and recorded in book 1 of deeds, on pages 590 and 591, October 18th, 1864.

JACKSON GARDNER,
Judge of Probate.

THE STATE OF ALABAMA, *Bibb County:*

I, Jackson Gardner, judge of probate for said county, hereby certify, that the above and foregoing contains a true copy of said deed, as taken from the records of my office.

Given under my hand at Centreville, in Bibb County, this November the 4th day, 1867.

JACKSON GARDNER,
Judge of Probate.

THE STATE OF ALABAMA, *Bibb County:*

I, Jackson Gardner, presiding judge of the court of probate in and for the county of Bibb, in the State aforesaid, hereby certify that the foregoing pages are a true copy of the said deed and certificates thereon, and a true transcript of the record thereof in my office; and I further certify that I am sole judge and clerk of said court.

Given under my hand and seal of the probate court of said county, at office, in Centreville, May the 1st, A. D. 1868.

[SEAL.] JACKSON GARDNER,
Judge of Probate.

137 [One dollar Alabama stamp.]

On behalf of plaintiff, F. S. Lyon, and associates, the following deed, No. 9, executed by David Lindsay to the Confederate States, was introduced in evidence:

STATE OF ALABAMA, *Bibb County:*

This indenture, made and entered into this 9th day of October, A. D. 1863, between David Lindsey and his wife, Susan Lindsey, of the aforesaid State and county, of the first part, and of the Confederate States, of of the second part, witnesseth:

That the parties of the first part, in and for the consideration of the sum of one hundred and fifty dollars, to them in hand paid at and before the signing and delivering of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and conveyed, and do by these presents grant, bargain, sell, and convey unto the Confederate States or their assigns, the following-described parcel or tract of land lying in the above State and county, in section twenty-seven of township twenty-four, of range eleven east, to wit: All that part of the northwest fourth of section 27, as above described, beginning at the northeast corner of the northwest fourth of northeast quarter of said

section, running thence south the line divided: the northeast fourth and northwest fourth of the northeast fourth of said section until said line intersects a new road leading from ore-banks of the Bibb navel furnace to said furnace; thence in a northwesterly direction with the road,
138 until said line and road intersect the section-line between sections twenty-two and twenty-seven; thence east with said dividing line to the beginning, it being the only land owned by said David Lindsey and wife east and northeast of said furnace road in the said northwest fourth of northeast fourth of section twenty-seven, township twenty-four, range eleven east, supposed to contain seven (7) acres, more or less: To have and to hold the above-granted premises, with all privileges, easements, rights, tenements, immunities, hereditaments, fixtures and franchises to the said parties of the second part, or their assigns. The parties of the first part for themselves, their heirs, administrators, or assigns, do forever warrant and defend the title to the property hereby conveyed against the lawful claim or claims of all persons whomsoever, and of the State of Alabama, as an indefeasible estate in fee-simple, free from all incumbrances forever.

In witness whereof the parties of the first part do hereunto set their hands and seals, on the day and in the county first written.

DAVID LINDSAY, [L. S.]

her
SUSAN WEST LINDSAY, [L. S.]
mark.

Signed and sealed and delivered in presence of—
Witness:
A. E. MOTT,
H. F. FOUCHER.

STATE OF ALABAMA, *Bibb County:*

139 Before me, P. Wallace, a justice of the peace in and for the State aforesaid, and Bibb County, came David Lindsay and Susan Lindsay, his wife, whose names are signed to the foregoing conveyance, known to me, acknowledged before me that, being informed of the contents of the conveyance, they executed the same voluntarily on the day the same bears date.

Given under my hand and seal this 9th day of October, 1863.

P. WALLACE, [L. S.]
Justice of the Peace.

Take notice that the foregoing deed was filed in office for record, the 7th of March, 1864, and was recorded the 11th of March, 1864, in book 1 of deeds, pages 560 and 561.

JACKSON GARDNER,
Judge of Probate.

STATE OF ALABAMA, *Bibb County:*

I, Jackson Gardner, presiding judge of probate in and for the county of Bibb, in the State aforesaid, hereby certify that the foregoing pages are a true copy of the said deed and certificates thereon, and a true transcript of the record thereof, in my office; and I further certify that I am sole judge and clerk of said court.

Given under my hand and seal of office, at office in Centreville, May 1st, 1868.

[SEAL.] JACKSON GARDNER,
Judge of Probate.

[$1.00 Alabama State stamp.]

On behalf of the plaintiff, F. S. Lyon, and associates, the following deed, No. 10, executed by John Bailey to the Confederate States, was introduced in evidence:

BIBB IRON WORKS, BIBB COUNTY, ALA.,
October 26, 1864.

140 This indenture, made and entered into between John Bailey, of the first part, and the Confederate States of the second part, witnesseth:

That the said parties of the first part, for and in consideration of five hundred dollars in hand paid, the receipt of which is hereby acknowledged, have bargained and sold, and do hereby bargain and sell, all the timber and lime-rock on the following-described tract or parcel of land, commencing at the mouth of J. N. Smith's spring branch, and running east 600 feet to a "plantation gate," thence north 330 feet to a large pear tree; thence northeast to a stake; thence north to the Little Cahaba River; thence with the river to the place of beginning, supposed to contain about seven acres: To have and to hold the aforesaid timber and lime-rock, and right and privilege of mining, and cutting and transporting the same, now and hereafter perpetually, on said land, with the privilege of ingress and egress on said land, to the only proper use and behoof of the said party of the second part, and their assigns forever. And the party of the first part covenants to and with the party of the second part and their assigns, that he is lawfully seized in fee of said lands, timber, and lime-rock thereon; that the same is unincumbered, and that he will forever warrant and defend the title to said lime-rock and timber, with all the privileges herein conveyed, against the lawful claims of all persons whatsoever.

141 In witness whereof, the party of the first part have executed this deed, this 20th day of October, 1864.

JOHN BAILEY. [L. S.]

Witness:

J. E. ROBESON and
A. E. MOTT.

THE STATE OF ALABAMA, *Bibb County:*

Personally appeared before me, P. Wallace, an acting justice of the peace in and for said county, J. H. Robeson, one of the subscribing witnesses, who being duly sworn, deposeth and sayeth, on oath, that he saw the subscriber, John Bailey, sign the within deed on the day the same bears date.

J. H. ROBESON.

Given under my hand this 25th day of October, 1864.

P. WALLACE, *J. P.*

I hereby certify that the foregoing conveyance was filed in my office for record, 29th day of March, 1866; recorded 3d day of April, 1866; and I further certify that there is fifty cents internal-revenue stamps on the same.

JACKSON GARDNER,
Judge of Probate.

STATE OF ALABAMA, *Bibb County:*

I, Jackson Gardner, presiding judge of the court of probate in and

for the county of Bibb, in the State aforesaid, hereby certify that the foregoing pages are a true copy of the said deed and certificates thereon, and a true transcript of the record thereof in my office; and I
142 further certify that I am sole judge and clerk of said court.

Given under my hand and seal of the probate court of said county, at office in Centreville, this May 1st, A. D. 1868.

[SEAL.] JACKSON GARDNER,
Judge of Probate.

[One dollar Ala. stamp.]

On behalf of F. S. Lyon, plaintiff, and associates, the following deed, No. 11, executed by C. C. Huckabee to the Confederate States, was introduced in evidence:

This indenture, made and entered into between C. C. Huckabee, of the county of Bibb and State of Alabama, of the first part, and the Confederate States of America, of second part, witnesseth—

That the said party of the first part, for and in consideration of the sum of twenty-one thousand two hundred and fifty dollars, to him paid by the party of the second part, the receipt of which is hereby acknowledged, has bargained and sold, and do' by these presents bargain and sell, to the Confederate States of America all the timber now on and hereafter produced on the following-described lands, to wit: The northeast quarter of section four, (4;) all of section three, (3,) except the east half of the southeast quarter of the northeast quarter; the northwest quarter of the northwest quarter, and the west half of the southwest quarter of section two, (2;) the west half of the northwest quarter, and the west half of the southwest quarter of section eleven, (11;)
143 the northeast quarter and the east half of the southeast quarter of section 10 (ten,) all in township twenty-three, (23,) range eleven (11) east; also the south half of the southeast quarter of section thirty-three, (33;) the southwest quarter, the south half of the southeast quarter, and the northwest quarter of the southeast quarter of section thirty-four, (34;) and the southwest quarter of the southwest quarter of section thirty-five, (35,) township twenty-four, range 11 (eleven) east, lying and being in Bibb County, Alabama, containing seventeen hundred acres, more or less: To have and to hold the right and privilege of cutting and transporting all said timber, now and hereafter perpetually, on said land, with the privilege of ingress and egress on said land, with all the right to cut and transport said timber, or to use or burn it on said land, to the only proper use and behoof of the said party of the second part and their assigns forever, the fee-simple in said lands being retained to the said party of the first part. And the party of the first part covenants to and with the party of the second part, and their assigns, that he is lawfully seized in fee of said lands and timber thereon; that the same is unincumbered, and that he will forever warrant and defend the title to the said timber, with the privilege herein conveyed, against the lawful claims of all persons whatsoever.

In witness whereof the party of the first part has executed this deed this 9th day of December, A. D. 1864.

C. C. HUCKABEE. [L. S.]

Witness—
GEO. M. DUSKIN and
E. N. MEDLEY.

144 (Signed in triplicate.)

STATE OF ALABAMA, *Dallas County:*

I, S. W. John, a notary public in and for said county and State, hereby certify that E. N. Medley, a subscribing witness to the foregoing conveyance, known to me, appeared before me this day, and being sworn, stated that C. C. Huckabee, the grantor in the conveyance, voluntarily executed the same in his presence, and in the presence of the other subscribing witness, on the day the same bears date; that he attested the same in the presence of the grantor and of the other witness, and that such other witness subscribed his name as a witness in his presence.

Given under my hand and seal notarial this 26th day of March, A. D. 1866.

S. W. JOHN, [L. S.]
Notary Public.

[State tax collected.]

I hereby certify that the foregoing conveyance was filed in my office for record on the 29th of March, 1866, and recorded 4th of April, 1868; and I further certify that there is $1 internal-revenue stamp on same.

JACKSON GARDNER,
Judge of Probate.

STATE OF ALABAMA, *Bibb County:*

I, Jackson Gardner, presiding judge of the court of probate, in and for said county of Bibb, in the State aforesaid, hereby certify that
145 the foregoing pages are a true copy of the said deed and certificates thereon, a true transcript of the record thereof in my office: and I further certify that I am sole judge and clerk of said court.

Given under my hand and seal of the probate court of said county, at office in Centreville, this 1st of May, A. D. 1868.

[SEAL.] JACKSON GARDNER,
Judge of Probate.

[$1.00 Alabama stamp.]

On behalf of the plaintiff and F. S. Lyon and associates, the following deed No. 12, executed by E. W. Jarman to the Confederate States, was introduced in evidence:

This deed made and entered into this day, 1st of March, 1864, between E. W. Jarman, of the county of Bibb, State of Alabama, and the Confederate States of America, of the second part, witnesseth—

That the said E. W. Jarman and his wife, Elizabeth Jane Jarman, for and in consideration of *of* the sum of two hundred dollars, to them in hand paid by the party of the second part, by and through Maj. W. Richardson Hunt, nitre and mining bureau, the receipt of which is hereby acknowledged, have bargained and sold, and do by these presents bargain, sell, and convey, unto the said party of the second part, all their right, title, and interest in and to the timber of all kinds now growing or hereafter to be grown upon the following-described lands, to wit:

The southwest quarter of the northeast quarter of section thirty-three, township twenty-four, range eleven (11) east, containing forty acres, more or less, lying and being in the county of Bibb, and
146 State of Alabama, in the Tuscaloosa land district: To have and to hold said timber, together with the privilege of burning the

same on said land, to the only use and benefit of the said second party and their assigns forever; and the said parties of the first part covenant to and with the said party of the second part, that they are lawfully seized of said land and timber, and that the same is unincumbered, and that they will forever warrant the title to said timber, together with the privileges conveyed above, against the claim or claims of all persons whatsoever; and the said Elizabeth Jane, wife of the said E. W. Jarman, in consideration of the foregoing, hereby relinquishes all her dower interest which might accrue to her in and to the said timber and privileges herein conveyed.

In testimony whereof the E. W. Jarman and Elizabeth Jarman, his wife, have hereunto set their hands and seals the day and date above written.

E. W. JARMAN. [L. S.]
ELIZABETH J. JARMAN. [L. S.]

Witness—
D. COLEMAN.
J. B. HOFFMAN.

STATE OF ALABAMA, *Dallas County:*

I, George C. Johnson, a justice of the peace for said county and State, do hereby certify that E. W. Jarman and Elizabeth J. Jarman, his wife, whose names are signed to the foregoing conveyance, and who are known to me, acknowledged before me this day, that being in-
147 formed of the contents of the conveyance, they executed the same voluntarily the day the same bears date.

Given under my hand this March 2d, 1864.

GEO. C. JOHNSON, *J. P.*

Take notice that the foregoing was filed in my office for record, the 7th day of March, 1864, and was recorded the 11th day of March, 1864, in book 1 of deeds, pages 561 and 562.

JACKSON GARDNER,
Judge of Probate.

STATE OF ALABAMA, *Bibb County:*

I, Jackson Gardner, judge of the probate court of said county, do hereby certify that the above attached and foregoing contains a true copy of the original deed recorded in my office, in book 1 of deeds, pages 561 and 562; and I further certify that I am the sole clerk of said probate court.

On behalf of the plaintiff, and F. S. Lyon and associates, the following deed, No. 13, executed by Wager Swayne, ass't commissioner of the Bureau of Refugees, Freedmen, and Abandoned Lands, to F. S. Lyons et al., was introduced in evidence:

To all to whom these presents may come:

Whereas the property hereinafter described, during the rebellion of the so-called Confederate States of America, was held, used, and employed by the officers and agents of the so-called Confederate
148 States of America, under a deed of bargain and sale of the Bibb County Iron Company, bearing date the 17th day of September, 1863, to the said Confederate States of America, in aiding and promoting the said rebellion, with the knowledge and consent of the said corporation;

And whereas, on the day of August last, the said property was taken into the possession of the United States under the laws of the same for collection of abandoned and captured property;

And whereas, by the authority of the President of the United States and the Secretary of the Treasury, the said property was advertised for sale at public auction, for the space of thirty days, and under the acts of Congress aforesaid, at Brierfield Rolling Mill and Bibb County Iron Works, in the county of Bibb, in the State of Alabama, on the 9th day of January, 1866, by the undersigned, Wager Swayne, assistant commissioners of the Bureau of Refugees, Freedmen, and Abandoned Lands in the State of Alabama, under authority of the President and Secretary of the Treasury aforesaid;

And whereas at the said sale at public auction, as aforesaid, and according to the authority and notice aforesaid, Francis S. Lyon, for himself and others, became the purchaser of the property hereinafter mentioned for the sum of forty-five thousand dollars, that being the highest sum bid therefor, to wit, lands described and conveyed by deeds to the late so-called Confederate States, and recorded in Bibb County: The southeast quarter of the southeast quarter of section twenty-one; the south half of the southwest quarter of section twenty-two;
149 the southeast quarter of the southwest quarter of section twenty-three; the southeast quarter, the south half of the northeast quarter; the southeast quarter of the northwest quarter, and the northeast quarter of the southwest quarter of section twenty-eight; all of section twenty-seven, except the northwest quarter of the northeast quarter of said section; all of section twenty-six, except the northeast quarter thereof; the southwest quarter; the south half of the southwest quarter, and the southwest quarter of the northwest quarter of section twenty-five; the north half of the northeast quarter of section thirty-three; the north half of section thirty-four; the northwest quarter of section thirty-five, except the southwest quarter of said northwest quarter; and the west half of the northeast quarter of said section thirty-five: Also so much of the east half of the northeast quarter of section thirty-five, and of the west half of the northwest quarter of section thirty-six, as lies north of the new road running from Ashby's depot to the furnaces of the Bibb County Iron Company, all in township twenty-four, range eleven east: Also a piece of land in the southeast part of the southwest quarter of section nineteen, township twenty-four, range twelve east, bounded as follows: Beginning at the southeast corner of said west half, running thence west on the section line fifty-seven poles to a stake; thence north fifty-seven poles to a stake; thence east fifty-seven poles to the east line of said tract; thence south on said line to the beginning, making a square block of twenty-acres, more or less: Also the tract or piece of land described as follows: Commencing at the half-section stake
150 of the south boundary line of section nineteen, in township twenty-four of range twelve east, running east on said boundary line seventy yards; thence north to the middle of Mahone's Creek; thence down said creek to the dividing line between the eastern and western halves of the section; thence south on said line to the beginning, containing in all two thousand five hundred and twenty acres, more or less: Also the following-described lands conveyed by sundry persons to the late government of the Confederate States by deeds recorded in said county of Bibb, to wit: Northeast quarter of section twenty-one; the northeast quarter of the southeast quarter of the same section; and the southeast quarter of the southwest of the same section; the north half of section twenty-two; the southeast quarter of

the same section, and the northeast quarter of the southwest quarter of the same section: Also the southwest quarter of the southwest quarter of section twenty-three. Also so much of the south half of the southwest quarter of section twenty-eight as lies south of the road from Tuscaloosa to Montevello: Also the northwest quarter of section thirty-three, and the southwest quarter of the northeast quarter of the same section thirty-three, in township twenty-four of range eleven east. Also the northeast quarter except the northwest quarter of said northeast quarter of section five; and the south half of the northwest quarter of said section five; and the northeast quarter of the southwest quarter of said section five, in township twenty-three, range eleven east, containing thirteen hundred and forty acres, more or less:

151 Also the following-described lands, claimed to have been purchased by and conveyed to the late Confederate States, and in their possession and use, but no deeds found on record, to wit: The southeast quarter of section twenty-four; and the southwest quarter of the same section, except the northeast quarter of the said southwest quarter of said section twenty-four: Also so much of section twenty-three as lies south of the tram-road; the east half of section twenty-five, except the south half of the southeast quarter of section twenty-five, which is included in the deed of Bibb County Iron Company: Also the northeast quarter of section twenty-six; the southwest quarter of the northwest quarter of section twenty-eight; and the northwest quarter of the southwest quarter of section twenty-eight; the south half of section thirty-three, except the northwest quarter of the southwest quarter thereof; and the southeast quarter of the northeast quarter of said section thirty-three; the southeast quarter of section thirty-four, except the northeast quarter of said section thirty-four; the southwest quarter of the southwest quarter of section thirty-five: Also the west half of the southeast quarter of section thirty-six, in township twenty-four, range eleven east: Also the southwest quarter of the southwest quarter of section nineteen; the northwest quarter of the northwest quarter of section thirty, in township twenty-four, of range twelve east: Also the northeast quarter of section four: Also

152 section three: Also section two, except the southwest quarter and the west half of the southeast quarter of the northwest quarter of said section; and, also, excepting the northeast quarter of the northeast quarter of said section; also the northeast quarter, and the east half of the southeast quarter of section ten; also the north half of section eleven, and the north half of the south half of section eleven; and the southwest quarter of the southwest quarter of section eleven: Also the northwest quarter of the southwest quarter of section twelve, in township twenty-three, of range eleven east—containing three thousand five hundred and sixty acres, more or less; the said lands including and embracing the Brierfield Rolling Mill and Bibb County Iron Works; it being intended herein to describe all the property, estate, and effects of the said Brierfield Rolling Mill and Bibb County Iron Works, owned, claimed, and in possession of the officers and agents of the late Confederate States, and used for the purposes stated, as included in the purchase of the said Francis S. Lyons, and intended hereby to be conveyed to him, together with all the improvements thereon, including the machinery, fixtures, buildings, material, coke, coal, wood, ore, limestone, wrought iron, wrought and cast scrap iron, muck-bar, blooms, and every other article of property appertaining to or belonging to the Brierfield Rolling and Bibb County Iron Works, with the exception only of the pig-iron on hand and ready for market: Now, in con-

153 sideration of the premises and of the sum of forty-five thousand dollars of lawful money of the United States to me in hand paid by the said Lyon, the receipt of which I hereby acknowledge, I, the said Wager Swayne, assistant commissioner, as aforesaid, do hereby sell and convey to the said Lyon, and to his heirs and assigns forever, the property, real and personal, hereinbefore described. This conveyance, however, is only of such right, title, and interest as the United States has in and to said property, the title not being intended to be warranted.

Witness my hand and seal this third day of February, 1866, this deed being executed in duplicate.

WAGER SWAYNE. [L. S.]
Assistant Commissioner.

The words "on the 9th January, 1866," the word "township," and the words "also so much of section twenty-three as lies south of the tram-road," interlined before signing.

Witness—
CHARLES DUVAL.
EDWARD WRIGHT.

I, Hugh McCullough, Secretary of the Treasury of the United States' do hereby ratify and confirm the estate of the said Francis S. Lyon' under the sale and conveyance aforesaid.

Witness my hand and the seal of the Treasury of the United States, dated this the day of , 1866.

The following order of Andrew Johnson, President of the
154 United States, to E. D. Townsend, A. A. G. United States Army, was introduced in evidence:

EXECUTIVE OFFICE,
Washington City, Nov. 11, 1865.

Ordered, That the civil and military agents of the Government transfer to the assistant commissioner of the Bureau of Refugees, Freedmen, and Abandoned Lands, for Alabama, the use and custody of all real estate, buildings, or other property, except cotton seized or held by them in that State as belonging to the late rebel government, together with all such funds as may arise or have arisen from the rent, sale, or disposition of such property which have not been finally paid into the Treasury of the United States.

ANDREW JOHNSON,
President.

Official:

E. D. TOWNSEND,
Assist. Adjutant General.

ADJUTANT GENERAL'S OFFICE, *Nov.* 11, 1865.

The following letter of E. D. Townsend, A. A. G. U. S. Army, to Hon. H. McCullough, Secretary of the Treasury, was introduced in evidence:

WAR DEPARTMENT, GEN'L'S OFFICE,
Washington, Nov. 13, 1865.

Hon. H. MCCULLOCH,
Secretary of the Treasury, Washington, D. C.

SIR: By direction of the Secretary of War I have the honor to enclose

herewith an Executive order of Nov. 11, 1865, relative to the
155 transfer of certain property belonging to the late rebel government, to the assistant commissioner of the Bureau of Refugees, Freedmen, and Abandoned Lands, for Alabama.

I have the honor to be, sir, very respectfully, your ob't serv't,

E. D. TOWNSEND,
Assistant A. G.

The following letter of Hon. Hugh McCulloch, Secretary of the Treasury, to R. V. Montague, collector of customs, Mobile, Alabama, was introduced in evidence:

TREASURY DEPARTMENT,
November 14th, 1865.

SIR: I enclose herewith, for your information and guidance, copy of an Executive order, dated 11th inst., directing the transfer of property, except cotton, under your control within the State of Alabama, to the assistant commissioner of the Bureau of Refugees, Freedmen, and Abandoned Lands, for that State.

Immediately on the receipt hereof you will take the necessary steps to carry out promptly and fully the directions therein contained, both so far as your own action is concerned and that of agents acting under and with you in the collection and care of property of that *of that* character.

You will regard this letter as super'eding that of the 23rd ult., directing certain disposition to be made of property at Selma, turned ove' to you by the military authorities; and you will regard it as ap-
156 plying to the property therein named, and conform your actions accordingly.

When the transfer is made, as directed by the Executive order, proper receipts to that effect should be taken in triplicate, one of which you will forward, with your report of your action hereunder, to the Department.

Very respectfully,

HUGH McCULLOCH,
Secretary of the Treasury.

R. N. MONTAGUE, Esq.,
Collector of Customs, Mobile, Ala.

The following letter of Assistant Attorney General J. Hubley Ashton to James Q. Smith, U. S. district attorney, was introduced in evidence:

United States district court, May 31st, 1867. R. Busteed, judge.

UNITED STATES
vs.
3,690 ACRES OF LAND.

ATTORNEY GEN'L'S OFFICE,
Washington, Oct. 24, 1866.

To J. Q. SMITH, Esq.,
U. S. Attorney, Montgomery, Ala.

SIR: You are hereby instructed to dismiss the proceedings in confiscation instituted in the district court of the United States for middle district of Alabama against certain property situated in Bibb County, Alabama, and known as the Bibb County Iron Works, claimed by

Francis S. Lyon, the same having been sold to him by Gen'l Swayne, of the Freedmen's Bureau, unless Mr. Lyon should prefer that, for
157 the purpose of securing and perfecting the title, he should desire them to be continued for his own use and benefit; and in that case the proceedings will be carried on in the name of the United States, at the cost and charges of Mr. Lyon. In case of such dismissal, it will be made without cost to Mr. Lyon.

Very respectfully, yours, &c.,

J. HUBLEY ASHTON,
Assistant Attorney General.

Filed by order of the court, May 31st, 1867.

E. C. V. BLAKE, *Clerk.*

The following is the testimony of Caswell C. Huckabee, one of the claimants and a witness, examined orally, in court, on behalf of himself and associates:

U. S. dist. court, middle dist. of Ala., May 26, 1870.

THE UNITED STATES OF AMERICA
vs.
3,690 ACRES OF LAND, LYON AND HUCKABEE, claimants.

C. C. HUCKABEE called and sworn for the defendant:

1st ques. Are you a party to this suit; and were you a corporator in the Bibb County Iron Works Company?

1st ans. I am; and was, sir.

2d ques. When did the persons who composed said company become the owners of the lands that subsequently went into the possession of the agents of the Confederate States?

2d ans. I think, the most of it, in 1862.

158 3d ques. With whose money, and for what purposes, was said lands purchased by them?

3d ans. It was purchased with the money belonging to the company, and for the purpose of making iron.

4th ques. Was it purchased in any sense for the purpose of aiding the rebellion?

4th ans. No, sir; it was merely an individual enterprise.

5th ques. About how much money did said company expend in improving said property before it parted with the possession of said property?

(Objected to by Judge Brooks; objection sustained; exception by John T. Morgan.)

6th question. Whether any iron works or foundry was in said place on the 17th of September, 1863; and if so, how long had the same been there, and by whom was the same put there; and describe the extent and character of such improvements?

6th ans. There were; in 1862 a furnace was erected and put in operation. There was another furnace erected, but had not been worked. There were rolling-mills erected in 1862 and 1863. All these improvements were erected by the Bibb County Iron Company. There were large improvements in the way of buildings on these lands, and by the same company, and a large expenditure in the way of mules, oxen,

wagons, and necessary implements for carrying on the iron-works,
159 and for steam-engines, by which power the works were operated.

7th question. Whether it required a large number of laborers and mechanics, and a large expenditure of money, to conduct said iron-works?

(7th ans. objected to by Brooks as irrelevant; objection sustained; exception by Morgan.

Judge Brooks moved to strike out answer and question 5 and 6; denied; no objection taken to ruling.)

8th ques. Whether or not the labor used in working said property was hired slave labor, or to what extent it was such labor?

(Objected to by Brooks; objection sustained; exception by Morgan.)

9th question. Who was the officer of the Confederate States in charge of its operations in providing iron for the use of its army and navy, in Alabama; whether his asserted authority included the country in which Bibb County Iron Works was situated?

(Objected to by Brooks as irrelevant and illegal in two parts of question; objection overruled; exception by Brooks.)

9th ans. W'm Richardson Hunt; his asserted authority included the territory in which the Bibb County Iron Works were situated.

10th ques. If said Hunt, or anyone acting under his authority, made any requirements or demands on said company in respect of the production of iron for the use of the Confederate States, tell what
160 they were, and where and by whom made, so as to put the court in possession of all the facts you know in relation thereto, and tell what reply said company made to said demands?

(The above question was objected to on behalf of the plaintiff and F. S. Lyon and associates, severally, as irrelevant and illegal; which objection was overruled by the court, and the witness permitted to answer the question; to which ruling of the court the plaintiff and F. S. Lyon and associates thereupon severally excepted.)

10th ans. Col. Hunt required of us that we should make a contract. I was president of the corporation. This requirement was made to me, and also of the corporation. He required us to deliver all the iron we made to the Confederate States. This was the contract he wished us to make. We were to deliver the iron at the uniform price which was paid by the Confederate States. I do not remember the precise sum, but think it was $50 a ton, perhaps $75 a ton. I refused to make that agreement. Finally Col. Hunt sent for me to Selma, to which place I went, and he demanded of me there that I should make a contract, and that the agreement we had was not a contract. I consulted with my stockholders, and the result was that we refused to make a contract.

I was sent for again by Hunt to go to Selma, and he there stated
161 that, inasmuch as we had refused to contract, we must do one of three things, or he would impress the works—we must either contract on government terms, or lease the works, or sell them to the Confederate States. I told him rather than make the contract or lease the works we would sell.

11th ques. If at any time said Hunt, or any one acting under the authority of the Confederate States, stationed any soldiers or other guard at said works, state when this was done and for what purpose it was done.

(Objected to by Brooks as leading. Objection overruled; excepted to by Brooks.)

11th ans. I knew Col. Hunt sent a guard, a man named Roberson, up

to the works, and he objected to the iron being moved. He came there in about March, 1863, I believe.

12th ques. How long did said Roberson remain at the works?

12th ans. My recollection is that it was several weeks.

13th ques. Whether any other person was sent there for that purpose?

13th ans. I don't know.

14th ques. If a person named Wood was sent to the works, who sent him, and tell, if you know, the purpose for which he was sent.

(Objected to by Brooks. Objection sustained. Morgan excepted.)

162 15th question. State whether or not a person named Wood went to said works, and if so, tell what you know in regard to the purpose for which he came to said works, and by whom he was sent there, if by any one, and tell what he did while there.

15th ans. A man by that name was there. I cannot say for what purpose he was sent, if he was sent. I don't know what he did when he was there.

16th ques. State how long it was after you had refused to lease the *lease the* property to the Confederate States, and also to make a contract with the Confederate States, for making iron, until you and your associates made the deed dated September 13th, 1863, to the Confederate States.

16th ans. I suppose it was three or four months; probably longer than that.

17th question. During that time what disposition was made of the iron produced by your company, and tell why it was so disposed of?

(Objected to by plaintiff and F. S. Lyon and associates severally; which objection was overruled by the court, and the witness permitted to answer the question; to which ruling of the court the plaintiff and F. S. Lyon and associates severally excepted.)

17th ans. It was used by the Confederate States, and this was because they would not allow us to sell it to any other parties.

163 18th question. State under what influences you and your associates made said deed of the 13th of September, 1863, to the Confederate States.

(Objected to by Brooks. Objection overruled; exception noted.)

Ques. by the COURT. Had this corporation a common seal?

Ans. Yes.

Ques. Was the seal of the corporation attached to this conveyance?

Ans. It was.

Ques. Was the seal adopted by you affixed to this conveyance, in addition to the individual seals of these corporators?

Ans. It was.

Ques. Were A. K. Sheppard, Gray Huckabee, W. N. Smith, and A. F. Huntington the same persons with whom you took counsel in respect of the demand made by Col. Hunt that you should enter into a contract with the Confederate States?

Ans. Yes, sir; they were the same persons.

Ques. As matter of fact, were all the signatures to this conveyance made at the same time and place?

Ans. They were.

(Ques. No. 18. Now asked by the court, and the plaintiff and F. S. Lyon and associates severally objected to same, as illegal and irrelevant; which objection was overruled by the court, and the witness permitted

to answer; to which ruling of the court the plaintiff and F. S. Lyon and associates severally excepted.)

Ans. No. 18. One influence was that we owed a large amount of money, and our debts were accumulating, and our debts were about three hundred thousand dollars. We knew if we contracted with the government we could not pay our debts or get back our cap-
164 ital; this was one of the influences. If we leased it, it was ruinous to the company, and we regarded it best for the company to dispose of the property. Another circumstance that influenced us, was that we had been told by Col. Hunt, that he would impress the works if one of these three things was not done.

19th question. In what money or other thing was the company paid for said property?

19th answer. Paid in Confederate States treasury-notes.

20th question. To what person was the deed handed which you made to the Confederate States?

20th ans. I think it was to Col. Hunt; I am not certain.

21st question. State the circumstances under which you made the deed to the Confederate States, which you admit, in your answers in this court, you made on the 9th December, 1864, so as to put the court in possession of all the facts relating thereto.

21st ans. The land conveyed in that instrument was adjoining the lands we conveyed to the confederate government, most of the timber having been used on the land owned by the government. The officer in charge, Maj. Weeks, stated that he needed the timber that was upon my land. I objected to selling him the land or timber; whereupon, he stated unless I would sell it he would have it valued and taken for the use of the government works. I agreed with him rather
165 than do all that, that he might take it at the price he offered, and make the deed accordingly. I objected to selling this land or timber, among other reasons, because I had a steam saw-mill on that land.

22d question. State whether or not said land, described in said deed had ever been the property of, or in possession of, the Bibb County Iron Works Company.

22d ans. Never had.

23d ques. If you had possession of said lands, described in said deed, after you made said deed, tell what time you got possession, and how long you retained the same, and tell whether during that time, your possession was interrupted.

23d ans. I did have them afterwards; I continued in possession, notwithstanding my deed—continued to run the mill and use the timber until the national forces came to the Bibb Iron Works; and after they left I resumed my possession, and continued to run the mill until after the purchase by Mr. Lyon from Gen. Swayne.

24th ques. Whether or not the national forces destroyed your mill, or whether the military officers of the United States took possession of the same?

24th ans. Neither.

25th ques. Whether or not you were present at the time the iron-works property of the Bibb County Iron Works was sold by the order or under the authority of Gen. Swayne; if so, when did said sale take place? State whether or not F. S. Lyon was present at said sale,
166 and if you gave any notice of the claim of yourself or yourself and associates in respect of said property; tell what notice you gave, and in what manner you gave said notice.

25th ans. I was at the sale; I think it was in February, 1866, as I recollect; I was there, and gave public notice that the Bibb Iron Works Company, of which I was president, had instructed me to forbid the sale of the property, and that whoever bought it would buy a law-suit; that we claimed it as the property of the company. I also forbid the sale at the same time, of my own individual lands, and stated that I claimed those individually.

Cross-examination of C. C. Huckabee:

1st ques. Who were the corporators of the company called the Bibb County Iron Company?

1st ans. Gray Huckabee, N. I. Smith, Dean Nance, and myself; we were the original owners and starters of the works, and the incorporators, I think; S. I. Wilson was one of them, I think.

2d ques. When and by what authority was said company chartered; and when and where was it organized?

2d. ans. There was a law of the State of Alabama, authorizing the formation of incorporations; I am not positive when this company was so organized, or organized under a statu'e. This was done in 1862. The company was organized in Bibb County, at the site of the works, in 1862.

167 3d ques. You said in your direct examination that this establishment was an individual enterprise, and in no sense intended to aid the rebellion; now, be so good as to state whether the exigencies of the Confederate States, arising out of the rebellion then being carried on by the Confederate States against the United States, induced you to erect or enlarge said iron-works, with the belief and expectation on the part of the stockholders that you could make a profitable business in furnishing iron and war material to the said Confederate States?

3d ans. The first object we had in view was to erect a small rolling-mill, and roll cotton and hoop-iron, rod-iron, and small bar-iron, and this was the character of the mill we put up. We *we* were not induced to erect or enlarge the works with the belief and expectation stated in the question. The value of iron, when purchased by individuals, and its scarcity in the country made it a more lucrative business than to sell to the government. I think it is very likely that we expected to sell a portion of the iron to the Confederate States government. This we could not avoid.

4th ques. Did the company, at some time, and when, contract with the Confederate States to let them have iron?

4th ans. We had to agree with the nitre and mining bureau of the Confederate States to let them have a portion of our iron in conse-

168 quence of their letting us have skilled labor from among their conscripts This I think, was some time in November, 1862.

5th ques. How many agreements or contracts did the company make with the Confederate States, to supply them with iron or other material?

5th ans. There were two contracts or agreements; both these agree ments were for iron and nothing else.

6th question. How much iron or other material, and what, was furnished by said company to the confederate government, and under what contracts or agreements was such iron or material furnished, and what use was it to be appropriated to, and what was done with it?

6th ans. I cannot say how much they were furnished under the agreements I have just spoken of. A portion of the iron, I suppose, was in-

tended to be used for cannon and other government purposes. I don't know, of my own knowledge, what was done with it.

6½ question. Don't you know the iron was taken down to the government works at Selma?

6½ ans. I think I have seen some of the iron at the works at Selma.

7th ques. Where is the record-book of the proceedings of your company?

7th ans. I don't know.

8th ques. Did not the company, by resolution, in the early stages of it solicit a contract for the sale of iron to the Confederate States,
169 and was not the first contract entered into voluntarily by the company, to furnish iron or other materials in aid of the war; if not, how was the contract otherwise superinduced?

8th ans. I have no recollection of it. The first agreement was entered into voluntarily. We had to do it to enable us to get skilled labor. We did not do it with a view of aiding the war.

9th ques. Did you call for the authority of Hunt, or any one else, to impress your iron-works, or force you either to contract for the sale of its products, or lease the establishment, or sell it? Did you see the authority, if any, under which he acted? If so, what was it? Who gave the authority? If you neither saw such authority nor knew of its existence, how can you state that any did exist?

9th ans. We did not call for authority. I do not think I ever saw the authority. Col. Hunt was down there as a government officer. The authority was so self-evident with us that we did not question it.

10th question. How much money did you obtain from the Confederate States for the deeds you made of the corporate property?

10th ans. It was six hundred thousand dollars in Confederate States treasury-notes.

11th ques. How much money did you obtain for the individual property from the Confederate States?

170 11th ans. I only know from the consideration expressed in the deed—twenty-one thousand two hundred and fifty dollars.

12th ques. What did the corporation, thus selling, do with the money obtained from the confederate government for said property?

12th ans. We paid our corporate debts, and divided the surplus amongst ourselves.

13th ques. What did you do with the money you received from the sale of your land?

13th ans. I don't know what I did with it; I may have some of it yet.

14th ques. What was the value of this money in gold when you received it? What was the value of the money in gold received by the corporation at the date of the contract, 17th September, 1863?

14th ans. I should say about fourteen to one; on the 17th September, 1863, it was fourteen for one.

15th question. How do you know the influences which operated upon the minds of the corporators, inducing them to consent to the sale made by the company of this property? Might there not have been other reasons that you have not named, influencing the minds of the respective corporators to make the resolution authorizing a sale?

15th ans. The whole matter was freely discussed among our-
171 selves, as to our indebtedness, and the probability of our being impressed. I cannot say that there could not have been other reasons, influencing the minds of other individuals to join in the resolution authorizing the sale.

16th ques. Was there not in the board of stockholders that resolved

upon a sale of this property, an apprehension that the improvements, &c., were liable to be destroyed by raids made by the troops of the United States; and were they not afterwards so destroyed, and when, and by whom?

16th ans. I think it was likely there was such an apprehension. The works were destroyed in March or April, 1865, by the United States forces.

17th ques. Was any complaint made to the Confederate States government that you had been improperly induced to sell your individual lands, or that the company had so been induced to sell its lands? If so, by whom, and when, and with what result?

(Objected to by Morgan; objection overruled; excepted to by Morgan.)

17th ans. None that I know of.

18th ques. At the time of this alleged sale to the Confederate States by the company, and of your sale of the individual lands conveyed to the Confederate States, were there chancery courts as well as other courts of the State of Alabama, and of the Confederate States, in the regular and unobstructed administration of justice in the State of Alabama?

172 (Objected to by Morgan; objection sustained by the court, and the witness not allowed to answer; and to this ruling of the court, the plaintiff and F. S. Lyon and associates thereupon severally excepted.)

19th ques. Was any attempt made to enjoin or restrain the acts of the alleged government agent in the matter of improvement of this property, or of its sale? Were any and what steps or movement taken by the company or any member thereof, and whom, to prevent or set aside said sale?

(Objected to by Morgan; objection overruled; exception by Morgan.)

19th ans. None that I know of.

20th ques. Was there not a chancery court held in Selma, and were there not able solicitors resident in said city of Selma, at the time the company and you sold the land in controversy?

(Objected to by Morgan; objection sustained; exception by Brooks.)

21st question. Who was it that negotiated for or on behalf of the company of which you were president, for the sale of the lands to the Confederate States?

21st ans. I did.

22d ques. Was not the property in controversy advertised for sale in the fall of 1865, by R. V. Montague, collector of the port of Mobile, professing to act under the order of the Secretary of the Treasury of the United States, and pending the advertisement, did not S. F. Lyon call on you in the city of Montgomery, and ask information

173 about the title and value of the property? Did you give Mr. Lyon such information as he asked, and did he or not in conversation with you in front of the entrance of the Exchange Hotel, tell you if you or any other citizen had a claim to the property, he would not bid on it? Did you not disclaim title to the property, and agree with Mr. Lyon, to join him in the purchase, at the proposed sale, if you could raise your part of the purchase-money.

22d ans. I think it was. Mr. Lyon did call on me, and he asked me as to the title and value of the property. I gave him the information he asked. I recollect telling Mr. Lyon that I claimed individually my saw-mill property. I don't recollect his saying if I or any other citizen had a claim for the property I would not bid for it. I stated to Mr. Lyon that I believed the title to this property to be good; that Col. Wetmore had examined the title up to the time we sold to the Confed-

erate States, and that I believed the titles were good. I did not agree with Mr. Lyon to join him in the purchase at the public sale. Mr. Lyon proposed to me that I could become a partner in the proposed company if I desired to do so. I declined it then, and did not hear of it afterwards. I told Mr. Lyon that I would like to join but that
174 I had not the money at that time. I had not consulted a lawyer as to the title under which I now claim, and did not know that as one of the original owners of the Bibb Iron Works *that* I had any rights left.

23d ques. If, in your answer to 22d question, you say you had a conversation with Mr. Lyon, in front of the Exchange Hotel, about the Brierfield iron property, did you or not tell him in that conversation that no title could be shown to that part of the property alleged to have been conveyed by you individually to the Confederate States; and when asked if you had made such a conveyance, did you or not say to Mr. Lyon, if he bought the property he would have no difficulty about the title, as you only wanted some saw-logs you had on the land?

23d ans. I stated this to Mr. Lyon: that the land I sold individually the deeds for them were lost, as I understood. I stated to him that I had made a deed, and that the deed was lost. I stated to Mr. Lyon that if he bought the property he would have no difficulty with us; that we would compromise the whole thing; that I had a saw-mill on the land.

24th question. Did you or not, after Mr. Lyon's purchase of the property, call upon him in his office, a' Demopolis, and, in presence of Col. Henderson, say to him that you had called to see him about a compromise in the matter of the Brierfield property? And did or not
175 Mr. Lyon in that conversation, in presence of Mr. Henderson, say to you that he had called upon you at Montgomery, and asked you if you had any claim to the property; had assured you he would not bid for the property if you had; that you asserted none, but agreed with him to join him in the purchase of it, if you could raise your part of the purchase-money? And did you not tell Mr. Lyon if he bought the property you would make no difficulty about the title to the land, as you only wanted some saw-logs you had on it?

24th ans. My recollection is that I called upon him at Demopolis about a compromise of my own individual land. I do not recollect whether Mr. Lyon stated that he had called upon me at Montgomery and asked me if I had any claim to the property, or whether he assured me he would not bid for it if I had. At the time Mr. Lyon talked with me at Montgomery I asserted no title, and I did not then know that I had any title. I am not a lawyer and had not consulted my lawyer; did not agree with Mr. Lyon to join him in the purchase.

25th ques. Were you not, when you had the conversation with Mr. Lyon in regard to the title to this land, as fully apprised of the facts attending and inducing said sale by you and the company to the Confederate States, as you now are?

25 ans. Yes.

176 26th ques. After you sold your individual lands to the Confederate States, were not said lands, or the timber thereon, used in connection with and for the benefit of the Bibb County Iron Works?

24th ans. A short time.

27th ques. After said lands were sold by you, did they not become a part of the tract land belonging to or connected with the Bibb County Iron Works?

27th ans. Yes.

28th ques. Did not the confederate government, through its agents, use the timber on the land sold by you individually to the Confederate States, in December, 1864, for the Bibb County Iron Works?

28th ans. I do not think they did.

29th ques. Was not your occupation of a portion of the land you sold as an individual, after the sale by you, held by permission of the Confederate States?

29th ans. It was by agreeement when the trade was made.

Re-direct examination of C. C. Huckabee:

1st ques. Did you furnish any iron to the Confederate States under the contract your company signed, but withdrew before the Confederate States signed it?

1st ans. None.

2 ques. When you talked with Mr. Lyon in Montgomery was not the property libeled in the United States district court; and did you not believe that your title to the property was gone by the events of the war?

(Objected to by plaintiff and F. S. Lyon and associates, severally, as illegal; which objection was overruled by the court, and the plaintiff and F. S. Lyon and associates excepted to the ruling of the court.)

177 2d ans. I understood it was libeled in the United States district court and believed my title was gone, as you state.

3d ques. When you had the conversation with Mr. Lyon at Montgomery, did you have any reference to the circumstances that occurred at the time the stockholders in the Bibb County Iron Works under their deed to the Confederate States?

3d ans. No.

The following testimony of F. S. Lyon, one of the claimants, who was examined orally in court on behalf of the plaintiff and himself and associates:

THE UNITED STATES OF AMERICA
vs.
3,690 ACRES OF LAND, HUCKABEE, CLAIMANT. } May 27th, 1870.

FRANCIS S. LYON called and sworn for the plaintiffs:

I purchased the Bibb County Iron Works, in Bibb County, Alabama, on the 9th day of January, 1866, for $45,000 (forty-five thousand dollars.) The property I purchased is shown by the map now in my hand, made by George H. Ames, civil engineer. The purchase was made on the premises at public sale, under an order of Gen'l Swayne. I hold as evidence of my title a certificate of Richard J. Knott, auctioneer

178 and special agent of the bureau, and a deed from Swayne, dated 3d of February, 1866, and a special act of Congress confirming Swayne's sale.

1st ques. Did you see the deeds of the former proprietors?

(Objected to; objection sustained; exception noted.)

2nd ques. Did you have a conversation with Huckabee before your purchase as to the title to the property? And, if yea, state it fully.

(Objected to; objection overruled; exception noted.)

2d ans. I did, about the 23d of Nov., 1865, at Montgomery. The property was at that time advertised by Montague, collector of Mobile. I told Huckabee I wanted information from him as to the *the* title of this

property, and as to its conditions and value. I told him if he or any one had a claim to the property, I would not bid for it. Huckabee made no claim to it all, but spoke of the conveyance of the property to the Confederate States; said there was a portion of the land which belonged to him individually, and as to this the Government could show no deed. I said I knew nothing of this, but supposed he knew whether he had conveyed it or not. Huc'abee made no direct reply to this. He smiled and said, "If you buy the property, we can have no difficulty about the title. I only want some saw-logs," which he had on the
179 land. I said, "We can have no difficulty about the saw-logs." Huckabee said the ore was valuable and so was the property; if well used would make money. I asked him then if he would like to join in the purchase of it. He said yes, but he was doubtful if he could raise his share of the purchase-money. He agreed to meet me at the sale, and, if he could raise the money, join me in the purchase. The sale proposed was postponed. I did not attend, and I presume he did not. On the 3d of February, 1866, I paid the purchase-money to Gen'l Swayne. C. C. Huckabee was at the sale by Swayne; he forbade the sale; told the auctioneer that he was instructed to give notice that whoever bought the property would buy a law-suit; did not say by whom he was instructed to give the notice. The auctioneer replied, Mr. "Huckabee, I have heard this notice would be given to depreciate the value of the property." Huckabee said "I know nothing about it." A Mr. Newton Smith, standing near Huckabee, said, "I give notice I was owner, but have no claim to it."

(Objected to by Morgan; objection sustained; excepted to by Brooks.)

The sale was proceeded with and I made the purchase. A Captain Simmons and a number of United States soldiers were in possession of the land when I bought. A Mr. Knott was there and Charles
180 Duval, a custom-house clerk, was there. Possession delivered me by Co'l Wright. He was representing Gen. Swayne. I was also put in possession by Knott, the auctioneer. I was also offered the aid of the United States soldiers to put every person out of the possession who interfered with my possession. I replied I did not wish any person removed by force. When I purchased, many of the wooden structures had been burned.

3d question. What improvements have you and your associates made, and at what cost, since the purchase?

(Objected to by Huckabee and associates; objection sustained by the court; to this ruling of the court the plaintiff and Lyon and associates each excepted.)

4 ques. Who is now, and has been since your purchase, in possession?

(Objected to by Huckabee and associates; objection sustained by the court, and Lyon & plaintiff excepted.)

I had no idea when I bought of the proceedings pending in the United States district court in relation to the property.

5th ques. When and under what circumstances did you first receive notice of the pendency of the proceedings in the United States court?

(Objected to; objection sustained; exception noted.)

6th ques. After you made the purchase, did you have any conversation with A. K. Sheppard, one of the claimants?

181 (Objected to; objection overruled; exception noted.)

Ans. Yes.

7th ques. State what it was.

(Objected to by Huckabee; objection sustained, and the plaintiff and F. S. Lyon and associates thereupon excepted to the ruling of the court.)

8th question. State whether or no in that conversation, he said anything, and if so what, about the negotiation and sale of this property to the Confederate States, and about the execution of the deed; and what did he say, if anything?

(Objected to; objection overruled; exception noted.)

Ans. I met Shep'ard in the summer of 1866, in Selma. He told me he had negotiated the sale himself; that it was voluntarily done, and for a consideration with which he was satisfied.

9th ques. If in that conversation anything was said in reference to the present suit, or in reference to Sheppard's being a party thereto, or in reference to Sheppard claiming any interest therein, state it.

(Objected to by Morgan, who states that at that time Shep'bard had not intervened pro interesse suo.

To question No. 9 Huckabee and associates objected, and the plaintiff and F. S. Lyon's counsel thereupon stated to the court that they expected to prove by the witness that in the conversation enquired about, Shep'ard stated to said Lyon that he, Shep'ard, had no right or claim to the property in controversy; that he had voluntarily sold and conveyed the same to the Confederate States, and was satisfied with
182 his bargain; that he had no interest in said suit, and had not authorized any one to make him a party thereto, and that he desired that Mr. Lyon should succeed therein. The objection to the question was sustained by the court, and the court refused to permit the witness to answer the same; to which ruling of the court the plaintiff and Lyon and associates thereupon excepted.)

10th question. In your conversation with Shep'ard was anything said touching his claim or right to the property in question, included in the deed to the Confederate States? If so, what was it?

(Question No. 10 was objected to by Huckabee and associates, and the counsel for the plaintiff and Lyon and associates stated to the court they expected to prove in answer to that question, that Shep'ard said to the witness that he had voluntarily sold and conveyed the property in question to the Confederate States, and that he had no claim to it, and had not authorized any one to claim the same for him; but the objection sustained by the court, and the witness was not permitted to answer the same; to which ruling of the court plaintiff and F. S. Lyon and associates each thereupon excepted.)

Being cross-examined, he says:

185 I purchased the entire real estate, including the rolling-mills; and in addition to the land sold by Swayne, I purchased what is stated in the certificate of sale annexed to the map I have produced. Everything included in my purchase was sold in one parcel. No separate estimate was put upon the value of the personal property. I told Huckabee that those who had determined to buy it would make up $100,000, (one hundred thousand dollars.) At this time I had no conversation with Swayne on the subject; the property had not been turned over to Swayne, but was under Montague's advertisement. A short time before the sale took place, two or three days, I had a conversation with Swayne, and asked him on what terms the sale would be. Swayne said he had not seen the property; that he did not know what it was worth, but hoped to get the full value; asked me what I would give for it. I said, if it was sold as a whole, I would bid fifty thousand

dollars for it, ($50,000.) Swayne said he did not know what it was worth; would send an officer with me to the sale, and reserved the right of one bid. Col. Wright was selected and went with me. Knott reserved the pig and scrap iron from the sale. I told Knott I understood the property was to be sold as a whole, and if not so sold, I would with-
184 draw my bid. Knott then said he would reserve only the pig-iron suitable for market. The property was set up as a whole, and I bid $45,000, (forty-five thousand dollars) for it, and it was knocked off to me at that price. My main object in calling on Swayne was to ascertain where I must pay the money. Swayne's "one bid" did not involve any restrictions; can't tell why Swayne reserved only "one bid." James Crawford and William Ross, of Mobile; John Collins and Ja's D. Browder, James Griffin, Bryan Whitfield, of Marengo; Gen. Gorgas and Mrs. Wynn, were associated with me in the purchase. I did not explain to C. C. Huckabee my conversation with Swayne about the "one bid." Col. Wright and I reached the premises the day before the sale. Don't know what examination Wright made of the property. We met at the rolling-mill. It was not understood before the sale that, in consequence of taking out the pig-iron, I was to bid $45,000, (forty-five thousand dollars,) instead of $50,000, (fifty thousand.) No other bid made but mine. Before the bid Wright and I had not entered into any calculation of the value of the personal property. I paid the purchase-money on the third of February, 1866; sale on the 9th January, 1866. The deed from Swayne to me is in my handwriting, and so is the memoranda intended for McCulloch's signature. C. C. Huck-
185 abee did not say that he was instructed by the members of the Bibb County Iron Company Works to forbid the sale. His voice was low in its tone, but audible; I heard what he said. I have difficulty in hearing; can't hear in one ear at all, and not well with the other. After hearing what Huckabee said at the sale, I did not purchase particularly on the faith of what he said to me in November, 1865; I purchased it upon the whole facts of the case. Possession was delivered to me by statement of Knott and Wright that the property was mine. I left Gen. Gorgas there, as my agent, in possession. The marshal of the United States had not an officer (dep.) there when it was sold. I did not receive possession from Duval nor from Captain Simmons. Knott had been in possession of the property for Montague, collector, and afterwards in possession under Swayne (the day before the sale.) No formal act putting me in possession was performed. Gen. Swayne and I discussed the mode of making the title. He said nothing as to the pendency of this suit.

James Q. Smith called and sworn for defendant:

Ques. After the marshal had seized the property in this case, state whether you had any conversation with General Swayne in reference to the transfer of the possession of the property in question to the Freedmen's Bureau; and if yea, state what it was.

186 (Objected to as irrelevant and as hearsay, (not being a party to this cause,) and as secondary. Objection sustained. Exception noted.)

The court asked counsel if they desired to avail themselves of an oral argument? They replied no.

The foregoing was all the evidence in the cause, and the objections and exceptions to the rulings of the court; and the plaintiff and the said F. S. Lyon and associates respectively except, also, to the decree of the court, and pray the court to sign and seal this their respective

bill of exceptions, which is accordingly done during the session of the court, as witness my hand and seal this 17th February, 1871.

RICHARD BUSTEED, *Judge.* [SEAL.]

The Freedmen's Bureau orders, referred to in the brief of Morgan, are to be inserted in the record as a part of the evidence.

BROOKS,
Attorney for & Lyon et al.

Filed February 17th, 1871, at 1 p. m.

E. C. V. BLAKE,
Clerk U. S. District Court, Middle District, Alabama.

187 *Waiver of jury.*

District court of the United States for the middle district of Alabama.

THE UNITED STATES
vs.
3,690 ACRES OF LAND, C. C. HUCKABEE & others, claimants.

We agree that the court may try this cause without a jury, reserving the right to review the decision of the court upon the law and evidence submitted to this court as in admiralty causes on the instance side, by writ of error or appeal.

JOHN J. MORGAN,
For Claimants.
CHILTON & THORINGTON & BROOKS,
For Plaintiff & F. S. Lyon & Associates.

Filed May 25th, '70.

E. C. V. BLAKE, *Clerk.*

Decree of court.

THE UNITED STATES OF AMERICA
vs.
3,690 ACRES OF LAND, C. C. HUCKABEE, CLAIMANT, of one part, and Caswell C. Huckabee and others, claimants of another part, and F. S. Lyon & others, claimants of another part.

188 This cause having been submitted to the court at a previous term, by the written agreement of all the parties, for a decision thereof on the law and facts; and the parties having, also, in said agreement waived a trial by jury, the court, by the consent, took the case under advisement; and the court having heard the evidence introduced by the parties respectively in support of the original libel and amended libel of information in this cause; and, also, in support of the claims asserted to the property seized in this cause, upon consideration thereof, it is adjudged and decreed by the court, that the libel of information and the amended libel of information, filed in this cause be dismissed.

It is further adjudged and decreed that the claim of Caswell C. Huckabee be allowed and sustained to the following-described rights and privileges, to wit, all the timber, and the right and privilege of

cutting and transporting all the timber now or hereafter on the following-described lands, the title to which said lands is also adjudged to be in said Caswell C. Huckabee, viz.: The northwest quarter of section
189 four; all of section three, except the east half of the southeast quarter of the northeast quarter; the northwest quarter of the northwest quarter, and the west half of the southwest quarter of section two; the west half of the northwest quarter, and the west half of the southwest quarter of section eleven; the northeast quarter, and the east half of the southeast quarter of section ten, all in township twenty-three, of range eleven east; also the southeast quarter of section thirty-three; the southwest quarter, the south half of the southeast quarter, and the northwest quarter of the southeast quarter of section four, and the southwest quarter of the southwest quarter of section thirty-five, all in township twenty-four, of range eleven east, lying and being in Bibb County, in the State of Alabama.

It is further ordered, adjudged, and decreed that the marshal of the United States for the middle district of Alabama, restore to the said Caswell C. Huckabee, the possession of the said lands which were seized in this cause, by writ of seizure heretofore issued from this
190 court, and the clerk of this court issue the necessary process in that behalf. And it is further considered, adjudged, and decreed that the claim of Caswell C. Huckabee, Gray Huckabee, Thomas C. Brown, Francis H. Hawks, A. S. Huntington, Alexander K. Sheppard, as tenants in common with the heirs-at-law of Washington M. Smith, deceased, be sustained and allowed, to the following-described lands in the said county of Bibb, being in the Tuskaloosa land district of Alabama, to wit: The west half of the northeast quarter, the east half of the northwest quarter, the southwest quarter of the northwest quarter of section thirty-four, of township twenty-four, of range eleven east: Also the southwest quarter of the southwest quarter of section twenty-six; the northwest quarter of the northwest quarter of section twenty-five; the northeast quarter of northeast quarter, the southeast quarter of the northeast quarter of section thirty-four, in township twenty-four, of range eleven east.

Also the following parcels of land, to wit: Commencing at the half-section stake of the south boundary line of section nineteen of
191 township twenty-four, of range twelve east, and running east, upon said boundary line, seventy (70) yards; thence north to the middle of Mahone's Creek; thence down said creek to the dividing line between the eastern & western halves of the section; thence south, on said line, to the beginning: Also the southwest quarter of the northeast quarter, the southeast quarter of the northeast quarter, the northeast quarter of the southwest quarter, and the southeast quarter of the northwest quarter of section twenty-eight in township twenty-four, of range eleven east: Also the south half of the southwest quarter of section twenty-two; and the southeast quarter of the southeast quarter of section twenty-one, in township twenty-four, of range eleven east: Also the south half of section twenty-seven; the north half of the northeast quarter of section thirty-three; the southeast quarter of section twenty-eight; the east half of the northwest quarter of section thirty-five; the northeast quarter of the northeast quarter of section twenty-seven; the south half of the northeast quarter of section twenty-seven;
192 the west half of the northeast quarter of section thirty-five; so much of the east half of the northeast quarter of section thirty-five, and of the west half of the northwest quarter of section thirty-six as lies north of the new road running from the Ashby depot to furnaces of the

Bibb County Iron Company; all in township twenty-four, of range eleven east: Also a piece of land in the southeast part of the east half of the southwest quarter of section nineteen in township twenty-four of range twelve, in which is the rolling-mill, bounded as follows: Beginning at the southeast corner of said southwest quarter, and running thence west, fifty-seven poles, to a stake; thence north, fifty-seven poles, to a stake; thence east, fifty-seven-poles to the east line of said tract; thence south, on said line, to the beginning, making a square block, of twenty ares, more or less: Also the southeast quarter of the southwest quarter of section twenty-six of township twenty-four, of range eleven east: Also the southeast quarter of section twenty-six; the southwest quarter, the west half of the southeast quarter, the northeast quarter
193 of the southwest quarter, and the southwest quarter of the northwest quarter of section twenty-five, (25,) all in township twenty-four, of range eleven east: Also the northwest quarter of the southwest quarter, and the west half of the northwest quarter, and the northeast quarter of the northwest quarter of section twenty-six; the south half of the southwest quarter of section twenty-three, and the southeast quarter of the southeast quarter of section twenty-two, all in township twenty-four, of range eleven east—with such exceptions as were reserved in the conveyance of J. N. Smith to the Bibb County Iron Works Company.

Also the iron-ore on the northwest quarter of the northeast quarter of section twenty-seven in township twenty-four, of range eleven.

Also all the iron-ore, with all the rights proper to be enjoyed in mining and removing the same, on that part of the following-described lands, which lies and is situate south of the Little Cahaba River, to wit: The northeast quarter, the west half of the southeast quarter, the northeast quarter of the southeast quarter, and the northwest quarter of section twenty-two, and the northeast quarter, and the north-
194 west quarter of the southeast quarter, the southeast quarter of the southwest quarter of section twenty-one, all in township twenty-four of range eleven east—the total privileges above described being within the scope of 640 acres, more or less: Also the timber for coaling purposes, that is to say, all the timber, except the oak-timber, the hickory-timber, enough pine-timber to fence the cleared land on the tract embraced in this number, enough coal-timber for one blacksmith's shop, and all pines that will square twelve inches in the butt, on the following lands: The southwest quarter of the northwest quarter, the southeast quarter of the northwest quarter, the northeast quarter of the southwest quarter, the southwest quarter of the northeast quarter, and the east half of the northeast quarter of section five in township twenty-three, and range eleven east, being the coaling-timber on two hundred & forty acres, more or less: Also all the mill-timber of every description fit to saw into lumber, on the southeast quarter of the northwest quarter, and the northeast quarter of the southwest quarter of section twenty-six in township twenty-four, and range eleven east.
195 And it is further ordered, adjudged, and decreed that the marshal of the United States for the middle district of Alabama, restore the possession of the said lands, and the privileges and easements above in this decree described, to Caswell C. Huckabee, Gray Huckabee, A. S. Huntington, Alexander K. Sheppard, Thomas C. Brown, Francis H. Hawks, as tenants in common with the heirs-at-law of Washington M. Smith, deceased, which said lands and privileges were seized in this cause by writs of seizure heretofore issued in this court, and that the clerk of this court issue the necessary process in

that behalf. And it is further ordered, adjudged, and decreed that Francis S. Lyon, James Crawford, William H. Ross, James D. Browder, John Collins, Bryan W. Whitfield, James F. Griffin, Amelia Gorgas, and Willie G. Winn, pay the costs of this suit, for which let execution issue.

RICHARD BUSTEED,
Judge, &c.

JANUARY 27, 1871.

Filed Jan'y 27, 1871.

E. C. V. BLAKE, *Clerk.*

196 *Prayer for appeal by United States.*

In the district court of the United States for the middle district of the State of Alabama.

THE UNITED STATES
vs.
3,690 ACRES OF LAND, THE BIBB COUNTY Iron Works, &c., Francis S. Lyon & others, his associates, claimants, and C. C. Huckabee and others, his associates, claimants.

The above-named plaintiff, The United States, conceiving herself ag'rieved by the final decree entered on the 27th day of January, 1871, in the above-mentioned cause, doth hereby appeal therefrom, to the Supreme Court of the United States, to the next term thereof to be held, and prays that this, her appeal, may be allowed, and that a transcript of the record and proceedings in the cause, duly authenticated, may be sent to said Supreme Court.

J. A. MINNIS,
United States District Attorney for the Middle District of Alabama.

197 In open court, application granted.

RICHARD BUSTEED, *Judge.*

FEB. 1, 1871.

Filed Feb'y 1, '71.

E. C. V. BLAKE, *Clerk.*

Prayer for appeal by F. S. Lyon and associates.

In the district court of the United States for the middle district of the State of Alabama.

THE UNITED STATES
vs.
3,690 ACRES OF LAND, THE BIBB COUNTY Iron Works, &c., Francis S. Lyon and others, his associates, claimants, & C. C. Huckabee & others, his associates, claimants.

The above-named Francis S. Lyon, James Crawford, William H. Ross, James D. Browder, John Collins, Bryan W. Whitfield, James F. Griffin, Amelia Gorgas, and Willie G. Winn, his associates, claimants, conceiving themselves aggrieved by the final decree entered on the 27th day of
198 January, 1871, in the above-mentioned cause, doth hereby appeal therefrom in their own behalf, to the next term of the Supreme

Court of the United States to be held at the city of Washington, D. C., and they pray that this their appeal may be allowed, and that they be allowed to appeal in their names separately, and that a transcript of the record and proceedings in the cause, duly authenticated, may be sent to the Supreme Court.

BROOKS & CHILTON,
Attorneys for F. S. Lyon and Associates.

Application granted in open court.

R. BUSTEED, *Judge.*

FEB'Y 1, 1871.

Filed Feb'y 1, 1871.

E. C. V. BLAKE, *Clerk.*

Bond.

The Supreme Court of the United States.

THE UNITED STATES OF AMERICA
vs.
3,690 ACRES OF LAND, AND THE BIBB COUNTY Iron Works, &c., Francis S. Lyon, & his associates, claimants, and Caswell C. Huckabee and others, claimants.

199 Know all men by these presents that we, Francis S. Lyon, James Browder, B. W. Whitfield, James F. Griffin, James Crawford, and George G. Lyon, and William H. Ross, are held and firmly bound unto Caswell C. Huckabee, Gray Huckabee, A. S. Huntington, Francis H. Hawks, Alexander K. Shepard, Thomas C. Brown, and the heirs-at-law of Washington M. Smith, deceased, in the sum of one thousand dollars, for which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors and administrators firmly by these presents, sealed with our seals and dated this the 2d day of February, 1871.

Whereas the above-named Francis S. Lyon and his associates, James Crawford, William H. Ross, James D. Browder, John Collins, Bryan W. Whitfield, James F. Griffin, Amelia Gorgas, and Willie G. Winn, in their names, and in the name of Caswell C. Huckabee and other defendants in this cause have prosecuted a writ of error to the
200 Supreme Court of the United States to reverse the judgment in the above-entitled suit, by the district court of the United States for the middle district of the State of Alabama:

Now therefore the condition of the above obligation is such, that if the above-named Francis S. Lyon and his associates shall prosecute said writ of error to effect, and answer all costs if he and they shall fail to make good their plea, then this obligation to be void; otherwise the same shall be and remain in full force and virtue.

F. S. LYON. [SEAL.]
JAMES D. BROWDER. [SEAL.]
B. W. WHITFIELD. [SEAL.]
JAMES F. GRIFFIN. [SEAL.]
JAMES CRAWFORD. [SEAL.]
WILLIAM H. ROSS. [SEAL.]
GEORGE G. LYON, *Surety.* [SEAL.]

Signed & sealed in presence of witness—
J. T. JONES.

This bond is approved Feb'y 4th, 1871.
RICHARD BUSTEED, *Judge.*

Filed 4th Feb'y, 1871, at 12, m.
E. C. V. BLAKE, *Clerk.*

201 UNITED STATES OF AMERICA,
Middle District of Alabama, ss:

I, E. C. V. Blake, clerk of the district court of the United States for the middle district of Alabama, hereby certify that the foregoing pages numbered from one to two hundred, inclusive, contain a true, correct, and complete transcript of the case of The United States of America against Three Thousand Six Hundred and Ninety Acres of Land, Caswell C. Huckabee, claimant of one part, and Caswell C. Huckabee and others, claimants of another part, and Francis S. Lyon and others, claimants of another part, as the same remains of record, and on file in my office as such clerk.

And I further certify that the original prayers for appeal on the part of the United States, and on the part of Francis S. Lyon and associates, and the allowance thereof, are hereto appended.

In testimony whereof I have hereunto set my hand and caused the seal of said district court to be affixed at Montgomery, this 24th day of October, A. D. 1871, and of the independence of the United States the ninety-sixth year.

[SEAL.] E. C. V. BLAKE,
Clerk U. S. Dist. Court for the Middle District of Alabama.

202 In the district court of the United States for the middle district of the State of Alabama.

THE UNITED STATES
vs.
3,960 ACRES OF LAND, THE BIBB COUNTY IRON WORKS, &c., Francis S. Lyon & others, his associates, claimants, and C. C. Huckabee and others, his associates, claimants.

The above-named plaintiff, The United States, conceiving herself aggrieved by the final decree, entered on the 27th day of January, 1871, in the above-mentioned cause, doth hereby appeal therefrom to the Supreme Court of the United States to the next term thereof to be held, and prays that this, her appeal, may be allowed, and that a transcript of the record and proceedings in the cause, duly authenticated, may be sent to said Supreme Court.

J. A. MINNIS,
U. S. District Attorney for the Middle District of Alabama.

203 (Indorsed:) United States vs. 3,960 Acres of Land, Bibb County Iron Works, &c., F. S. Lyon & others, claimants; Huckabee et al., cl'mts. Prayer for appeal by United States. In open court, application granted Feb'y 1, 1871. Richard Busteed, judge, &c. Filed Feb'y 1, '71. E. C. V. Blake, clerk.

204 In the district court of the United States for the middle district of the State of Alabama.

THE UNITED STATES
vs.
3,960 ACRES OF LAND, THE BIBB COUNTY IRON WORKS, &c., Francis S. Lyon & others, his associates, claimants, & C. C. Huckabee & others, his associates, claimants.

The above-named Francis S. Lyon, James Crawford, William H. Ross, James D. Browder, John Collins, Bryan W. Whitfield, James F. Griffin, Amelia Gorgas, and Willie G. Winn, his associates, claimants, conceiving themselves aggrieved by the final decree entered on the 27th day of January, 1871, in the above-mentioned cause, doth hereby appeal therefrom in their own behalf, to the next term of the Supreme Court of the United States to be held at the city of Washington, D. C.; and they pray that this their appeal may be allowed, and that they be allowed to appeal in their names separately, and that a transcript of the record and proceedings in the cause, duly authenticated, may be sent to said Supreme Court.

BROOKS & CHILTON,
Attorneys for F. S. Lyon & Associates.

205 (Indorsed:) United States vs. 3,960 Acres of Land, Bibb County Iron Works, &c., Lyon et al., cl'm'ts; & Huckabee et al., cl'm'ts. Prayer for appeal by F. S. Lyon and associates. Application granted in open court. R. Busteed, judge, &c. Feb. 1, 1871. Filed Feb'y 1st, 1871. E. C. V. Blake, clerk.

206 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judge of the district court of the United States for the middle district of Alabama, greeting: [SEAL.]

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, between The United States of America, libellants, against 3,690 Acres of Land which are claimed by Thomas C. Brown, Gray Huckabee, Caswell C. Huckabee, Washington M. Smith, A. S. Huntington, Francis H. Hawks, and Alexander K. Sheppard, Francis S. Lyon, James Crawford, William H. Ross, James D. Browder, John Collins, Bryan W. Whitfield, James F. Griffin, Amelia Gorgas, and Willie G. Minner, a manifest error hath happened, to the great damage of the said United States of America, as by their complaint appears.

207 We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and seventy.

D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

Allowed by—

208 (Indorsed:) U. S. writ of error.

I allow this writ of error November 3rd, 1871.

JOSEPH P. BRADLEY,
Associate Justice of Sup. Court U. S.

209 The United States of America to Thomas C. Brown, Gray Huckabee, Caswell C. Huckabee, Washington M. Smith, A. S. Huntington, Francis H. Hawks, and Alexander K. Sheppard, Francis S. Lyon, James Crawford, William H. Ross, James D. Browder, John Collins, Bryan Whitfield, James F. Griffin, Amelia Gorgas, and Willie G. Minner, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the first Monday of December next, pursuant to a writ of error, filed in the clerk's office of the district court for the middle district of Alabama, wherein The United States of America are the plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Joseph P. Bradley, justice of the Supreme Court of the United States, this 3d day of November, in the year of our Lord one thousand eight hundred and seventy-one.

JOSEPH P. BRADLEY,
Associate Justice of the Supreme Court of the U. States.

210 (Indorsed:) U. S. vs. 3,690 Acres Land. Original citation.

Received, and service of the within citation executed on Messrs. Morgan Lapsley and Nelson, attorneys of the following-named defendants in error, to wit: Thomas C. Brown, Gray Huckabee, Caswell C. Huckabee, Washington M. Smith, A. S. Huntington, Francis H. Hawks, and Alexander K. Sheppard, by leaving a true copy thereof with said attorneys; and executed the same also on W. M. Brooks, attorney for Francis S. Lyon, James Crawford, William H. Ross, James D. Browder, John Collins, Bryan Whitfield, James F. Griffin, Amelia Gorgas, and Willie G. Winn, the other defendants in error, this 8th November, A. D. 1871.

R. W. HEALY,
U. S. Marshal.
By H. COCHRAN,
Deputy.

I make oath and say that I am, and for a long time have been, deputy marshal of the middle district of Alabama, and that the allegations in the foregoing return on this writ made by R. W. Healy, U. States marshal, through me, are true in substance and fact.

H. COCHRAN,
Deputy U. S. Marshal.

Sworn to & subscribed before me this 17th day of Nov'r, A. D. 1871.
[SEAL.] HUGH S. D. MALLORY,
U. S. Commissioner for the Middle Dist. of Ala.

211 UNITED STATES OF AMERICA,
Middle District of Alabama:

I, E. C. V. Blake, clerk of the district court of the United States for the middle district of Alabama, hereby certify, in obedience to the annexed writ of error sued out by the United States, in the cause wherein the United States of America filed their libel against 3,690 acres of land, and in which Thomas C. Brown, Gray Huckabee, Caswell C. Huckabee, Washington M. Smith, A. S. Huntington, Francis H. Hawks, Alexander K. Sheppard, Francis S. Lyon, James Crawford, William H. Ross, James D. Browder, John Collins, Bryan Whitfield, James F. Griffin, Amelia Gorgas, and Willie G. Winn appear as claimants, that I have transmitted full, complete, and correct copies of the record, of all papers, exhibits, depositions and other proceedings in the said cause, in said writ of error mentioned, on an appeal by the United States of America, and Francis S. Lyon, James Crawford, William H. Ross, James D. Browder, John Collins, Bryan Whitfield, James F. Griffin, Amelia Gorgas, and Willie G. Winn, to the Supreme Court, in said cause, allowed by the Honorable Richard Busteed, judge of the district court of the United States for the middle district of Alabama and thereto appended.

And I further certify that said original writ of error, the citation and its service endorsed thereon are hereto appended. And I transmit the same together with this certificate as my return thereon to the Supreme court of the United States.

212 In testimony whereof I have hereunto set my hand and caused the seal of said district court to be affixed at Montgomery in said district this twenty-fourth day of November, A. D. eighteen hundred and seventy-one, and of the independence of the United States the 96th year.

[SEAL.] E. C. V. BLAKE,
Clerk United States District Court
for the Middle District of Alabama.

213 UNITED STATES OF AMERICA:

The President of the United States to the honorable judge of the district court of the United States for the middle district of Alabama, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court before you, wherein the United States of America filed their libel to condemn 3,690 acres of land, and in which Thomas C. Brown, Gray Huckabee, Caswell C. Huckabee, Washington M. Smith, A. S. Huntington, Francis H. Hawks, Alexander K. Sheppard, appeared as claimants, and wherein also appeared Francis S. Lyon, James Crawford, William H. Ross, James D. Browder, John Collins, Bryan Whitfield, James F. Griffin, Amelia Gorgas and Willie G. Minner, were also claimants, a manifest error hath happened to the great damage of the said Francis S. Lyon, James Crawford, William H. Ross, James D. Browder, John Collins, Bryan Whitfield, James F. Griffin, Amelia Gorgas, and Willie G. Minner, as by the complaint appears.

214 We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid on this behalf, do command you, if the judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next in the said Supreme Court to be then and there held that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court, the first Monday of December, in the year eighteen hundred and seventy.

[SEAL.] D. W. MIDDLETON,
Clerk of the Supreme Court of the United States.

215 Know all men by these presents that we, Francis S. Lyon, James Browder, B. W. Whitfield, James F. Griffin, James Crawford, and George G. Lyon and William H. Ross and P. Phillips are held and firmly bound unto Caswell C. Huckabee, Gray Huckabee, A. S. Huntington, Francis H. Hawks, Alexander K. Sheppard, Thomas C. Brown, and the heirs-at-law of Washington M. Smith, deceased, in the sum of one thousand dollars, for which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators firmly by these presents, sealed with our seals, and dated this 4th day of November, anno Domini 1871.

Whereas the above-named Francis S. Lyon, James Crawford, William H. Ross, James D. Browder, John Collins, Bryan W. Whitfield, James F. Griffin, Amelia Gorgas, and Willie G. Winn have prosecuted a writ of error to the Supreme Court of the United States, to reverse the judgment in the suit of the United States on a libel of information against 3,690 acres of land, in the district court of the United States for the middle district of Alabama:

Now, therefore, the condition of the above obligation is such,
216 that if the above-named Francis S. Lyon and his associates shall prosecute said writ of error to effect, and answer all costs if he and they shall fail to make good their plea, then this obligation to be void; otherwise the same shall be and remain in full force and virtue.

F. S. LYON, [L. S.]
Per P. PHILLIPS, *his Attorney.*
JAMES D. BROWDER, [L. S.]
Per P. PHILLIPS, *his Attorney.*
B. W. WHITFIELD, [L. S.]
Per P. PHILLIPS, *his Attorney.*
JAMES F. GRIFFIN, [L. S.]
Per P. PHILLIPS, *his Attorney.*
JAMES CRAWFORD, [L. S.]
Per P. PHILLIPS, *his Attorney.*
WILLIAM H. ROSS, [L. S.]
Per P. PHILLIPS, *his Attorney.*
P. PHILLIPS. [L. S.]

(Indorsed:) Copy of bond. Citation & bond. Approved. J. P. Bradley, associate justice Sup. C't U. S.

217 (Indorsed:) Writ of error and copy of bond. Allowed by me this 3d day of November, 1871. Joseph P. Bradley, associate justice of Sup. C't U. States.

218 UNITED STATES OF AMERICA:

To Thomas C. Brown, Gray Huckabee, Caswell C. Huckabee, Washington M. Smith, A. S. Huntington, Francis H. Hawks, and Alexander K. Sheppard, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the district court for the middle district of Alabama, wherein Francis S. Lyon, James Crawford, William H. Ross, James D. Browder, John Collins, Bryan Whitfield, James F. Griffin, Amelia Gorgas, and Willie G. Winn are the plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

219 Witness the Honorable Joseph P. Bradley, Justice of the Supreme Court of the United States, this 3d day of November, anno Domini 1871.

JOSEPH P. BRADLEY,
Associate Justice of Sup. C't U. States.

(Indorsed:) U. S. vs. 3,690 Acres Land. Original citation.

Received, and service of the within citation executed by leaving a true copy thereof with Messrs. Morgan, Lapsley and Nelson, attorneys of the defendants in error, this 8 day of November, A. D. 1871.

R. N. HEALY,
U. S. Marshal,
By H. COCHRAN,
Deputy.

I make oath and say that, for a long time I have been, and still am, deputy of R. W. Healy, U. States marshall for the middle district of Alabama, and that the statements in the foregoing return of said Healy, as such marshall, are true in substance and fact.

H. COCHRAN,
Deputy U. S. Marshal.

Sworn to & subscribed before me this 17th day of November, A. D. 1871.

[SEAL.] HUGH S. D. MALLORY,
U. S. Comm'r for the Middle Dist. of Alabama.

220 UNITED STATES OF AMERICA,
Middle District of Alabama:

I, E. C. V. Blake, clerk of the district court of the United States for the middle district of Alabama, hereby certify, in obedience to the annexed writ of error sued out by Francis S. Lyon, James Crawford,

William H. Ross, James D. Browder, John Collins, Bryan Whitfield, James F. Griffin, Amelia Gorgas, and Willie G. Winn, in the cause wherein the United States of America filed their libel against 3,690 acres of land, and in which Thomas C. Brown, Gray Huckabee, Caswell C. Huckabee, Washington M. Smith, A. S. Huntington, Francis H. Hawks, and Alexander K. Sheppard appear as claimants, and also the said plaintiffs in error appear as claimants, that I have transmitted full, complete, and correct copies of the record of all papers, exhibits, depositions, and other proceedings in the said cause, in said writ of error mentioned, on an appeal by the United States of America, and Francis S. Lyon, James Crawford, William H. Ross, James D. Browder, John Collins, Bryan Whitfield, James F. Griffin, Amelia Gorgas, and Willie G. Winn to the Supreme Court in said cause, allowed by the Honorable Richard Busteed, judge of the district court of the United States for the middle district of Alabama, and thereto appended.

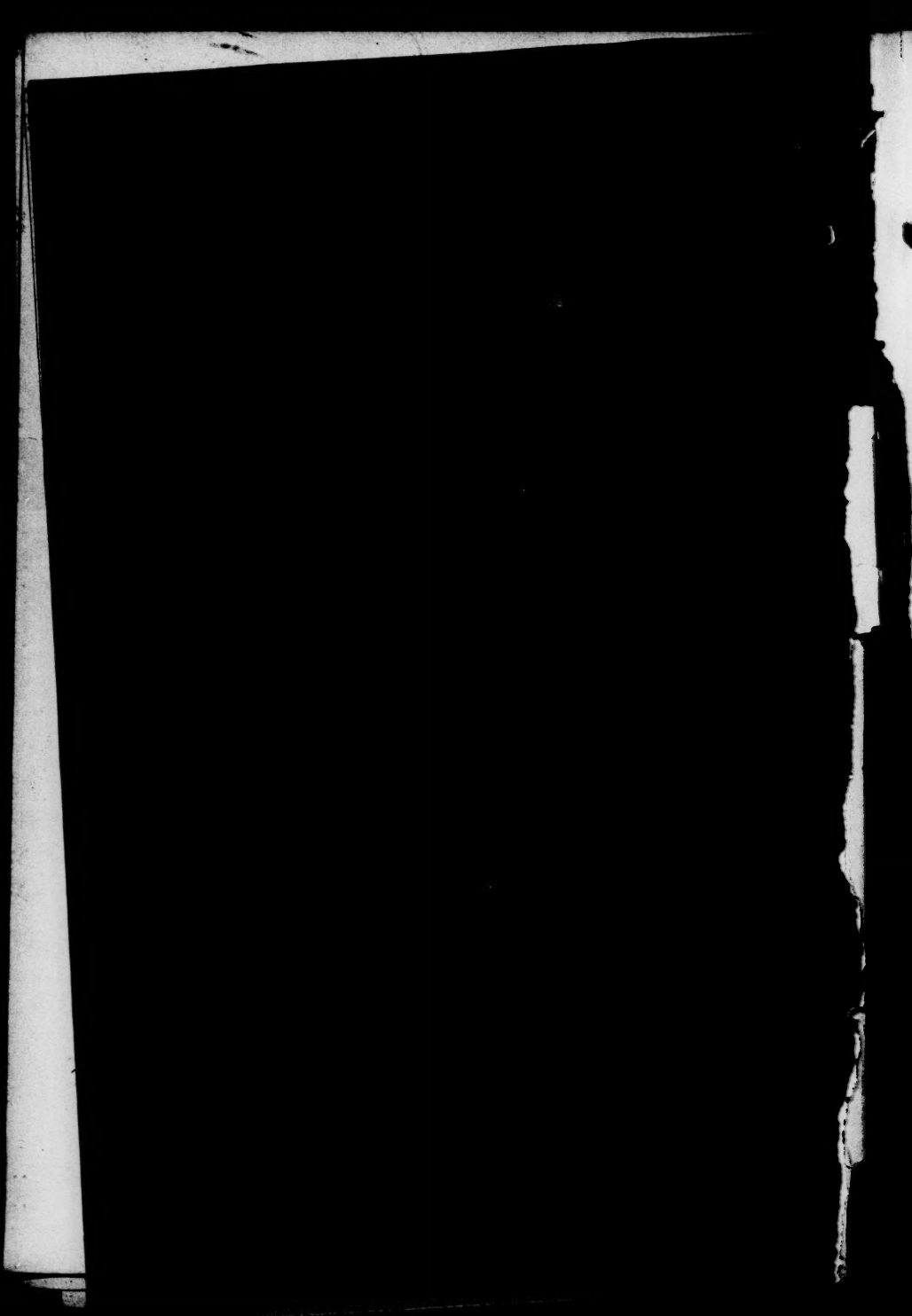
And I further certify that said original writ of error, the citation, with its service endorsed thereon, and a copy of the bond of said plaintiffs in error for costs of appeal, are hereto appended,
221 and I transmit the same, together with this certificate, as my return thereon, to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and caused ithe seal of said district court to be affixed, at Montgomery in said distrrct this twenty-fourth day of November, anno Domini eighteen hunded and seventy-one, and of the independence of the United States the 96th year.

[SEAL.] E. C. V. BLAKE,
Clerk United States District Court Middle District of Alabama.

(Indorsed:) No. 438. Filed 29th November, 1871.

(Indorsement on cover:) No. 438. The United States and Francis S. Lyon, James Crawford, W'm H. Ross, James D. Browder, John Collins, Bryan Whitfield, James F. Griffin, Amelia Gorgas, and Willie G. Winn, plaintiffs in error, vs. Thomas C. Brown, Gray Huckabee, Caswell C. Huckabee, Washington M. Smith, A. S. Huntington, Francis H. Hawks, & Alexander K. Sheppard. M. Alabama D. C. U. S. Filed 29th November, 1871.



Supreme Court of United States.

UNITED STATES,
LYON *et al.*
v.
BROWN, HUCKABEE *et al.*
} No. 202.

Brief of P. PHILLIPS,

OF COUNSEL, WITH THE ATTORNEY GENERAL,

For Plaintiffs in Error.

Polkinhorn. & Co., prs , Washington, D. C.

Supreme Court of United States.

UNITED STATES,
LYON *et al.*
v.
BROWN, HUCKABEE *et al.*
} No. 202.

Brief of P. PHILLIPS,

OF COUNSEL, WITH THE ATTORNEY GENERAL,

For Plaintiffs in Error.

This is an information filed in the District Court for the Middle District of Alabama, on 1st October, 1865. It is filed by "James Q. Smith, attorney of the United States for said District, who prosecutes for the United States *and an informer.*"

And is against certain property known as the "Bibb County Iron Works and Rolling Mill," said to belong to the late so-called Confederate States, seized and now in custody of John Hardy, Marshal of said District, *under an order of seizure issued by said attorney on the 1st October*, 1865.

Having thus charged the ownership to be in the Confederate States, the information goes on to allege, that the said property in the years 1863–'4–'5 had been used, by the consent of the owners, in manufacturing of iron into all kinds of machinery in aid of the rebellion.

It thus concludes: "Wherefore he prays that process in due form may issue against said property to enforce the *seizure*, confiscation, and condemnation of the same, and requiring notice to be given to all persons concerned to show cause, on return day of said process, why such property should not be decreed (condemned?) p. 2.

A writ of seizure, dated on the 4th Monday in May, 1865, is found at p. 1. Though dated six months preceding the filing of the information, it recites the filing of it on the 1st of October, 1865. It commands the Marshal to attach the property described as belonging to the Confederate Government, and to detain the same, and to cite all persons having interest to show cause why the said property should not be condemned or forfeited "and the proceeds *distributed* according to the prayer of the information."

On this writ no seizure was ever made.

On the 30th May, 1866, Thomas Brown filed his claim asserting ownership of the property, (p. 3,) in behalf of himself, Huckabee et al.

He denies that the property was ever seized by the Marshal as averred in the information, or that the property was used in aid of the rebellion by consent of owners.

He then avers that he and those whom he represents had, before the May Term, 1866, received pardons, wherefore, he claims, that the property be restored to them.

On 26th November, 1866, a claim was filed by Francis S. Lyon, in behalf of himself and several others, which avers—that the premises in controversy were sold and conveyed on 19th September, 1863, by the then owners, a corporation under the name of the "Bibb County Iron Company," to the Confederate States for the sum of

$600,000, by their deed with full covenant of warranty; that the purchase money was paid, and full possession transferred; and that the purchase was made for the purpose of manufacturing arms and munitions of war.

That the Confederate States used and occupied the same from the date of purchase to the March, 1865, when the same was captured by the Federal forces under Gen'l Wilson, who claimed the same as the property of the United States.

That this property thus held by the United States was, after due advertisement, sold at public auction by order of Gen'l Swayne, Assistant Commissioner of the Bureau of Refugees, Freedmen, &c., and at said sale he purchased the same for himself and the other claimants on the 9th January, 1866, for the sum of $45,000, and received from Gen'l Swayne a deed therefor.

District Attorney Smith having been now removed, the new District Attorney, Mr. Bugbee, filed on 31st July, 1866, an amended libel, (p. 7.)

In this it is recited that the property was captured by the armed forces of the United States from the Confederate States, and "turned over by the captors to, and seized by the Marshal of this court under an order of seizure, issued in behalf of the United States on the 1st October, 1865.

(It will be borne in mind that the seizure referred to was the one directed by District Attorney Smith.)

The libel then avers that these works had been used with the consent of the owners in supplying war materials in aid of the rebellion from the commencement of the war to 17th September, 1863, when the owners sold to the Confederate States.

It then avers the capture of the property in April, 1865, and being so captured "the same have been seized by order of the President of the United States, and turned over to the jurisdiction of this court to be confiscated and condemned."

The libel then states the sale from Gen'l Swayne to Lyon and others for $45,000, and the passage of the act of Congress on 15th December, 1866, confirming the same; and concludes with prayer for process of law to *enforce the seizure* and condemnation of said property, for the purpose of vesting title in said Lyon in accordance with the act of Congress, (p. 11.)

Brown and his co-complainants filed exceptions (p. 16) denying the jurisdiction of the court, on the ground that the United States had parted with its interest by the sale to Lyon. The 7th exception claims the dismissal of the proceedings on the ground "that the original libel was filed on the information of an informer, and that by the amendment thereto, and the substitution thereby of other private persons as the premotents and beneficiaries of said proceedings, using the name of the United States in that behalf, *the rights of said informer are stricken down and destroyed*, contrary to the constitution of the United States."

On the 30th November, 1869, the same parties file their answer, in which they repeat generally the grounds of exception, and claim that the deed of 17th September, 1863, was made under duress; and it concludes with the prayer that they may be restored to "the possession of their lands in said amended libel described," p. 19.

The case was tried before Judge Busteed, on the following agreement signed by counsel.

"We agree that the court may try this cause without a

jury, reserving the right to either party, to review the decision of this court, upon the law and evidence submitted to this court, as in admiralty cases, on the instance side upon writs of error, or appeal to the Supreme Court of the United States," (p. 20.)

A further agreement was made as to all the deeds found in the record as properly in evidence.

On the 27th January, 1871, Judge Busteed, "adjudged and decreed," that the libel of information, and the amended libel of information filed in the cause *be dismissed.*

He then decrees, that Huckabee's claim be sustained to certain timber, with the right of cutting and transporting timber on certain sections of land therein discribed, and that he be restored to the possession of certain land seized under the writ of seizure.

It is "further adjudged and decreed," that the "claim of the two Huckabees, Brown, Hawks, Huntington, Sheppard, as tenants in common with the heirs of Smith, be sustained and allowed" to the land described.

Also, "all the iron ore, with all the rights of property to be enjoyed in mining and removing the same on the following described lands—

And it is further ordered, adjudged and decreed, that the clerk of the court issue the necessary process, and that Lyon *et al.* "pay the costs of this suit, for which let an execution issue." (p. 83.)

The District Attorney, on behalf of the United States. Mr. Minnis, then filed a motion, *appealing from the final decree.*

Lyon and his associates also filed a similar motion—

and in open court the *appeal* was allowed by the judge, (p. 85.)

The record in this condition was sent to Washington, when the counsel here applied to Judge Bradley for a *writ of error*, which was allowed, and the cause now stands upon that writ.

A bill of exceptions was taken on the trial which begins at p. 19, and extends to p. 82. It thus concludes,

"The foregoing *was all the evidence in the cause*, and the objections and exceptions to the ruling of the court, and the plaintiff, and said F. S. Lyon and associates, respectively, except also to the *decree* of the court, and pray the court to sign and seal this their respective bill of exceptions, which is accordingly done during the session of the court, as witness my hand and seal."

RICHARD BUSTEED, *Judge.*

THE EVIDENCE.

The undisputed facts are—

1st. That the Confederate Government entered into possession, by purchase of the premises in controversy, on 17th September, 1863, and used the same for the manufacture of arms, &c.

2d. That the purchase was made for the consideration of $600,000. The vendor and owner of the premises was the "Bibb County Iron Company," a corporation chartered by the Legislature of the State. The stockholders and corporators were C. C. Huckabee, A. R. Sheppard, Gray Huckabee, W. M. Smith, and A. S. Huntington.

3d. The deed executed by the Company under its corporate seal, (p. 48) recites that at a meeting of all the

stockholders, held on 9th September, 1863, it was resolved unanimously that the President be authorized for the sum of $600,000, to sell the Confederate States all its lands, negroes, mules, &c., and to execute deeds of *warranty*; and whereas the party of the 2d part agrees to pay the said sum for said property, provided the *said stockholders unite in the conveyance.* Now, therefore, in consideration of the premises and of the $600,000, in hand paid, &c.

The deed contains full covenants of warranty, and is signed by the "Bibb County Iron Company" by its President, and also by C. C. Huckabee, Sheppard, Smith, and Huntington. More than a month subsequently, to wit: 25th November, 1863, it was acknowledged before the Probate Judge, as having been "*executed voluntarily on the day of its date.*"

4th. The Confederate States continued the possession and use of the property until 1865, when it was captured by the Federal forces under the command of Gen'l Wilson.

5th. The possession was continued in the United States, until General Swayne, under orders from the department advertised the property for sale at public auction. The property was so sold. Lyon and associates became the purchasers for $45,000, which was paid to General Swayne, and from him received possession with his deed dated 3d February, 1866, (p. 65.) This deed was confirmed by the act of Congress of 15th December, 1866, (p. 20.)

DURESS.

The only disputed fact relates to the execution of the deed. It is claimed that this was effected by *duress.*

The testimony of all the witnesses is directed solely to this point, McDaniel, (p. 23,) Mott, (p. 28,) Robeson, (p. 33,) Wetmore, (p. 40,) and Huckabee, one of the claimants, (p. 70.) Robeson is the only witness besides Huckabee himself called by the defendants. Robeson's testimony relates to the orders for impressing iron prior to the purchase of the "works."

As then the whole question turns upon the evidence of Huckabee, who was examined in open court, we give the following extracts.

3d. question. With whose money was the land purchased? It was purchased with the money belonging to the company.

10th question. If said Hunt, or any other one acting under his authority, made any requirements or demands on said company, in respect to the production of iron for the use of the Confederate States, tell what they were and by whom made, so as to put the court in possession of all the facts you know in relation thereto, and tell what reply the company made to said demands?

(This question was objected to, objection overruled and exception taken.)

Answer. "Colonel Hunt required of us that we should make a contract; I was president of the corporation. This requirement was made to me and also of the corporation. He required us to deliver the iron we made to the Confederate States. This was the contract he wished us to make—we were to deliver the iron at the uniform price of $50, perhaps $75, per ton. I refused to make that agreement. Finally, Colonel Hunt sent for me to Selma, and he demanded of me there, that I should make a contract, *and that the agreement we had*, was not a contract. I consulted with my stockholders, and the result was that we refused to make a

contract. I was sent for again by Hunt to go to Selma, and he there stated, that in as much as we had refused to contract, *we must do one of three things*, or *he would impress the works*. We *must either contract on government terms*, or *lease the works, or sell them to the Confederate States. I told him rather than make the contract or lease the works we would sell*," (p. 71.)

18th question. State under what influences you and your associates made the deed of 17th September, 1863? Objected to. [Objection overruled and exception taken.]

Here the judge broke in with these questions:

Has this corporation a common seal? Yes.

Was the seal of the corporation attached to the conveyance? It was.

Was the seal adopted by you affixed to this conveyance, in addition to the individual seals of these corporators? It was.

Were Sheppard, Huckabee, Smith and Huntington, the same persons with whom you took counsel, in respect of the demand made by Colonel Hunt that you should enter into a contract with the Confederate States? Yes, sir, they were the same persons.

As a matter of fact, were all the signatures to this conveyance, made at the same time and place? They were. (p. 72.)

After this interlude, the witness proceeded to answer question 18, as follows.—"One influence was that we *owed a large amount of money; our debts were accumulating, and were about* $300,000. We knew if we *contracted* with the government, we could not pay our debts or get back our capital; this was one of the influences. If we *leased* it, it was ruinous to the company, and we regard-

ed it best for the company to dispose of the property. Another circumstance that influenced us was, that we had been told by Colonel Hunt that he would impress the works if one of these three things was not done," (p 73.)

Cross examination.

10th question. How much money did you receive from the Confederate States, for the deed made of the corporate property? Six hundred thousand dollars in Confederate notes.

11th question. How much did you receive for the individual property? I only know from the consideration stated in the deed $21,250.

12th question. What did the corporation, thus selling, do with the money obtained from the Confederate States for said property? *We paid our corporate debts, and divided the surplus amongst ourselves.*

15th question. How do you know the influences which operated on the minds of the corporators, inducing them to consent to the sale made by the company of this property? Might there not have been other reasons that you have not named, influencing the minds of the respective corporators to make the resolution authorizing the sale? The whole matter was freely discussed among ourselves *as to our indebtedness*, and the probability of our being impressed. I cannot say, that there could not have been other reasons, influencing the minds of other individuals to join in the resolution authorizing the sale (p. 75.)

16th question. Was there not in the board, that resolved upon a sale, an apprehension that the improvements were liable to be destroyed by raids made by the troops of the United States, and were they not so

destroyed? *I think it likely there was such an apprehension.* The works were destroyed by the United States troops in March or April, 1865.

17th ques. Was any complaint made to the Confederate States that you had been improperly induced to sell your individual lands, or that the company had been so induced to sell its lands? None that I know of.

18th ques. At the time of these, alleged sales, were the chancery as well as other courts in the State in the regular administration of justice? [objected to.—objection sustained and exception taken.]

19th ques. Was any step taken to restrain the government agent in the matter of impressment or sale, or any step taken to prevent or set aside the sale? None that I know of.

20th ques. Was there not a chancery court held in Selma, and were there not able solicitors resident in said city when the company sold the land in controversy? [objected to—objection sustained—exception taken.]

Having thus given the evidence of the president of the company, and the chief party in interest, on the question of duress—we call attention to the evidence of Thos. B. Wetmore—the attorney and agent employed to prepare the deed and consummate the sale, to show how entirely free the transaction is of all threat or compulsion (pp. 40,-1-2-3,)

The Pleadings.

The case as shown by the pleadings is this—an information filed in behalf of the United States and *an informer* to condemn certain real estate, sold by an incorporated

company, known as the "Bibb County Iron Company" on 17th September, 1863, to the Confederate States, which was captured by the Federal forces, while in the possession and use of said Confederate States, and sold by order of the government to parties now in possession under their deed.

No claim is put in by said company, but in lieu of this, a claim is made by certain persons claiming to be owners, who allege the conveyance by the company is invalid —*First*, because the Confederate States were incapable of being the grantee in such a deed; and *second*, because said deeds was made under *duress*.

The pleadings further show that the Confederate States, paid for the conveyance the sum of $600,000, and though the parties claimant seek by their claim and answer to set aside the conveyance of the company, no offer is made to account for the sum received or any part thereof.

On these pleadings a decree is rendered, which ignores the company, its rights and obligations, and vests the title and possession of the premises in said claimants "as tenants in common, with the heirs at law of Washington M. Smith, deceased."

Again, in a proceeding filed in the name of the United States, to condemn property, the court, while holding the property not subjected to condemnation, entertains the case for the purpose of settling the conflicting title and claim to land between the several rival defendants.

Again, it shows a proceeding to confiscate property, the title and possession having been in the Confederate States, when captured by the Federal forces.

Again, the record shows no seizure made by authority of the court.

Again, assuming the answer to be true, as found at p. 19—the facts stated do not amount in law to such duress as would avoid the conveyance.

Such are the facts as appear from the pleadings, and if the court should feel itself authorized under the peculiar condition of this record to look at the evidence, as it was agreed in the court below it should, they will find a decree without parallel, so far as my experience extends.

So far as I have investigated, this is the first instance in which the doctrine of duress has been applied to the case of a corporation.

The conveyance was made on a resolution of the board adopted at a meeting of all the stockholders, eight days before the conveyance was made.

The government agent was not content to accept the conveyance of the corporation under its seal, but required, before they would agree to consumate the sale, that all the stockholders should also join in its execution, which was done.

One month after the conveyance the president of the company and all the corporators go before the judge, and acknowledge that they *voluntarily executed* the conveyance on the day it bears date.

The evidence of the president admits that one inducement to sell to the Confederate States was, that the company was heavily in debt, and that with the purchase money of $600,000 they had paid off creditors to the amount of $300,000 and divided the surplus between the corporators.

To prove that the corporation acted under duress, the case is made to rely on the evidence of a *single corporator*, and when he is asked if the other corporators may not have been induced to pass the resolution authorizing a sale by other influences than such as he stated to have actuated him, admits they may have been.

Not a particle of evidence to show that any complaint by any one in interest was ever made either in or out of court, or by appeal to the authorities as to the alleged force by which this conveyance was made.

When Mr. Lyon proposed to purchase from the goverment, he had an interview with this witness as to the title to this property. In his answer to the 22. ques. p. 76 he says, "Mr. Lyon did call on me and asked me as to the title and value of the property. I gave him the information required. I recollect telling him I claimed individually my saw mill property. I stated to Mr. Lyon that *I believed the title to this property to be good.* That Col. Wetmore had examined the title up to the time we sold to the Confederate States, and *that I believed the titles good.* My. Lyon, proposed that I should become a partner in the proposed company if I desired to do so. I declined it then and did not hear of it afterwards. I told Mr. Lyon, *I would like to join*, but I had not the money at that time. *I had not consulted a lawyer as to the title under which I now claim*, and did not know that as one of the original owners of the Bibb Iron Works, I had any rights left."

Again, in answer to 24 question, "at the time Mr. Lyon, talked with me at Montgomery, *I asserted no title*, and I did not *then know I had any title. I am not a lawyer and had not consulted my lawyer.*" (p. 77.)

This conversation is shown at p. 78, to have been had

with Mr. Lyon, after the witness knew the libel in this case had been filed.

On this flimsy evidence these claimants have obtained a decree vesting in them a title and possesion to this valuable property, ignoring the rights and obligations of the corporation, without accounting for the large sum which they received and used in payment of their debts; and this decree was obtained in a court exercising the judicial powers of the United States!

That the circumstances stated do not fall within any legal definitions of duress, see—

Brown v. Pierce, 7 Wall., 214.

Baker v. Morton, 12 Wall., 150.

1. Parson's Contr., 319.

1. Story's Eq., § 239.

Barrett v. French, 1. Conn., 256.

The case of Forshay v. Fergurson, 5 Hill, relied on by the other side, and which carries this doctrine to its greatest length, is no support for the present case. "I do not intend to say (says the judge) that a man can avoid his bond on the ground that it was procured by an illegal *distress on his goods;* but I entertain no doubt that a contract procured by threats and fears of battery, or the *destruction* of property, may be avoided on the ground of duress." In this case there was no *destruction* threatened, but only *impressment*, which may be likened to a distress.

But if duress in fact existed this would not make the conveyance void, but voidable only, and a bona fide purchaser for valuable consideration without, notice, would hold the estate against the original grantor.

Fletcher v. Peck, 6 Cr., 133.

Bean v. Smith, 2 Mas., 252, 272.

Somes v. Brewer, 2 Pick, 184.

Woods v. Mann, 1 Sumn., 509.

And in such a transaction, if the party on whom the duress has been practiced stands by and allows the defendant to purchase, this will bar his right of recovery. Much less will he be permitted to recover when on inquiry made by the intended purchaser he advises him that his title is good.

Doolittle v. McCullough, 7 Ohio St., 307.

And if a party seeks to set aside his conveyance rather than to affirm it, he can only do so by a restoration of the consideration received for it.

Harding v. Handy, 11 Wheat., 103.

Adams Eq., Marg'l p. 191.

Morton v. Young, 3 Greanleaf, 33.

Cushing v. Wyman, 38 Maine, 591.

Cook v. Gilman, 34 New H., 556.

Suppose the deed from the corporation could be avoided, this could only be done by the *corporation itself.* Where fraud or duress is set up, it is not sufficient that the individual corporators are the actors.

It is all important that this distinction between the members as constituents of an organized body, and as unorganized individuals should not be lost sight of. The principle is inflexible that in a corporation all the parts are not the whole. This is not only true of the conduct or administration of a corporation, it is true also of its rights of property. They are referred not to all the

members, but entire and undivided to the judicial person as a unit in law. Hence for the purpose of a suit the corporation must appear by its constitutional organs or curators. The appearance of each and every member is no appearance at all.

Bro. Corporation, 28. Coke Lit., 66 B.

In Bro. Abr under the head of "Duress," (pl. 18) we find the following—"*Dures ne poit este al corps politique, mes poit este al Maior de faire chose apparetignant a son office*, PER OPTIMEM OPINIONEM, *car il est teste del corporat. Imprisonment del teste del natural corps en pitlorie, est imprisonment de tout le corps, car entier.*" (Cites 21. Ed. 4, 8, 14, 15.)

And in Brownlow it is said, that a husband may avoid a deed on account of the duress upon his wife, and so a mayor and commonalty may avoid a deed on account of duress of imprisonment of the mayor, for there is identity of person. (2 Brownlow, R. 276.)

The title of the United States to the premises was acquired by actual capture, and also by its right of succession to the overthrown government.

In the case of the United States v. Paddleford, after speaking of the exemption of private property, it is said, "rights of possession in public property belonging to the hostile organization, or used in actual hostilities, depend on different principles. Such rights are transferred at once to the captor, upon the capture of the place in which the property may be." (9 Wall, 540.)

Again, in United States v. Klein, the court classifies property in the insurgent States.

1st. That which belonged to the hostile organization, or was employed in actual hostilities on land.

2d. That which at sea became lawful subject of capture and prize.

3d. That which became the subject of confiscation.

4th. A peculiar description known in the recent war, called captured and abandoned property.

The property being thus distributed into these four classes, the court say—

"The *first* of these descriptions of property, like property of other like kind, in ordinary international wars, became wherever taken, *ipso facto*, the property of the United States." (13 Wall, 136.)

It will be seen that in the other three classes, the title of the original owner was only divested by judicial proceedings—while property in the first class vested in the United States without any such proceedings. (p. 137.)

These principles are fully sustained by the most eminent writers on international law.

"With respect to *immoveable* property, captured in war, the established doctrine of international law, may now be said to be that the acquisition of it is not holden to be completed, before either the territory in which it is situated has, *by submission and consequent extinction of its national personality*, become incorporated in the possession of the conqueror; or, what is a much safer title to property so acquired, before a treaty of peace, has recognized and ratified the possession of the conqueror."

Phillimore, 3 vol., 505, CCCCVI.

Again, says the same author, "Mere actual possession of *immoveable* property by the conqueror, does not confer a *right of alienation*, which, *after the conqueror has departed*, will enure to oust the original owner, unless such a result

has formed part of the stipulation of a treaty, or been ratified by some public act of the State." p. 682, DXLII.

In Halleck, the doctrine is thus stated—"Complete conquest, however effected, carries with it all the rights of the former government. In other words the conqueror becomes the heir and universal successor of the defunct or extinguished State. His rights extend not only to the corporeal property of the State, as *real estate and movables*, but also to its incorporeal property, debts, &c. And as his *imperium* has become established, he is considered in law as in possesion of the things, (*corpora*) and the rights (*jura*) to things which appertain to such *imperium*, and may *use and dispose of them as his own.*"

"It is only in the *case of a restoration* that any question arises, with respect to the rights of the conqueror to dispose of either the domains or debts of the conquered State." Chap. XXXIII, p. 839.

Independent of all this we have the surrender of General Taylor, who commanded the department in which the premises were situate, on 4th May, 1865.

2d. Art. Artillery, small arms, ammunition, and *other property of the Confederate Government*, to be handed over to the officers appointed for that purpose on the part of the Government of the United States."

Again, by the 12th section, act 16, July, 1866, it is provided, that "the Commissioner shall have power to seize, hold, use, lease, *or sell* all *buildings and tenements and any lands* appertaining to the same, or otherwise, formerly *held under color of title for the so-called Confederate States*, and not heretofore disposed of by the United States, &c. &c. (14 Stat., p. 176.)

It is much insisted on, that the deed was *absolutely void*,

because the Confederate States were incapable of being a grantee—"that it was not a person or legal entity—and being engaged in rebellion, was opposed by law as well as arms throughout the United States." (Mr. Morgan's Brief, p. 13.)

This, be it remembered, is claimed by parties who, in urging their claim, aver that they aided and abetted in the rebellion carried on by this nameless thing, acknowledged their allegiance, and thus recognized it as their legitimate government.

If, *incapax*, in reference to a deed for land, it was equally incapable of being a party to any contract whatever, and yet we know as a fact, that the Government of the United States has been maintaining suits in foreign countries as the successor of the Confederate States, and claiming rights through them, and it has covered into the Treasury, millions of money derived from property sold to them.

It is too late, if ever it was soon enough to raise the question;—for this court as early as 1868—in the case of Thorington v. Smith (8 Wall, 9,) described the Confederate States as "*a government*, called by publicists, *a government de facto*, but more aptly denominated, a *government* of paramount force," and repeated decisions since have affirmed the same principle.

The plea, that the conveyance was void because there was no grantee capable in law of receiving it, cannot be made where the contract has been *fully executed*. In this case parties engaged in the rebellion ask to treat their conveyance as void when made in favor of the government carrying on the rebellion.

On the oral examination of Huckabee—exception was duly taken to the following questions, which were permitted to be answered:

10. "If said Hunt, or *any one* acting under his authority, made any requirements or demands on *said company*, in respect to the production of iron for the use of the Confederate States, tell what they were, and where and by whom made, so as to put the court in possession of all the facts you know in relation thereto; and tell what reply said company made to said demands." (p. 71.)

18. "State under what *influences* you and your associates made said deed of 13th September, 1863, to the Confederate States." (p. 72.)

The objection to the 10th question is, that as the enquiry related to a deed executed on the 13th September, 1863, the requirement for "production of iron" as bearing on the question of duress should have been limited to that date or to a period so proximate as to show that it operated in inducing its execution. What reply the company made should have been shown by the act of the corporation.

The objection to the 18th question is, the witness was called on to state not only the "influences" which operated on *his own* mind, but on the mind of his *associates*.

It is a remarkable fact already adverted to, that this question of duress was allowed to rest on the evidence of a single corporator, who, by permission of the court, was permitted to testify for all the corporators.

For the purpose of disproving the duress by showing the entire acquiescence of these parties long subsequent to the execution of the deed, the following cross-interrogatories were put to the witness:

18. At the time of the sale to the Confederate States were there Chancery Courts as well as other Courts of the State of Alabama and the Confederate States in the regular unobstructed administration of justice?

20. Was there not a Chancery Court at Selma, and able solicitors resident there, at the time the company and you sold your lands?

Previous to the examination of this witness, Mr. Wetmore had testified, that at the time of this conveyance, "there was no law authorizing the impressment of real estate."

It was, therefore, important on this head and directly pertinent to it—to show that the courts were open, and that no complaint or attempted redress had been made.

Assignment of Error.

1st. The court was without jurisdiction for want of a seizure of the premises.

2d. Because the property had already vested in the United States by capture from the Confederate States.

3d. There is error in the admission and rejection of evidence as stated in the bill of exceptions.

4th. There is error in the decree in favor of Huckabee and the other corporators.

5th. If, as the court held, the premises were not subject to condemnation, and so dismissed the libel, it had no authority to decide on the conflicting titles of the adverse claimants, but could only order restoration of the possesion to the party from whom it was taken.

6th. If the court had jurisdiction, then there should have been a decree of condemnation.

It is no objection to the question of jurisdiction that it is now raised by the party who invoked it.

Capron v. Van Noorden, 2 Cr., 124.

Dred Scott, 19 How., 393.

If the court should hold that there was jurisdiction in the court below, and the case, as prepared, does not authorize them to review the decree on the evidence, then the court should reverse for a new trial. The parties made an agreement sanctioned by the court that the case was to be reviewed by this court on the law and the evidence, and their mistake in entering upon such an agreement will not be allowed to work a forfeiture of rights.

Burr v. Des Moine, 1 Wall, 99.

Armstrong's Foundry, 6 Wall, 769.

Flanders v. Tweed, 9 Wall, 431,

Graham v. Bayne, 18 How., 62.

It is hoped, however, that the court may find fit opportunity in reversing this decree, to express its opinion on the title set up by Huckabee and others, and so give quiet to the title which the Government has conveyed to Lyon and his associates.

P. PHILLIPS,

For Plaintiffs in Error.

THE UNITED STATES

VS,

C. C. HUCKABEE, ET ALS.,

No. 202.

APPEAL FROM DISTRICT COURT FOR MIDDLE DISTRICT OF ALABAMA.

ARGUMENT OF JOHN T. MORGAN FOR DEFENDANTS.

Supreme Court of the United States.

THE UNITED STATES

vs.

C. C. HUCKABEE, ET ALS.,

CLAIMANTS.

This case was tried in the District Court of the United States for the Middle District of Alabama, and by agreement of Counsel a trial by jury was waived. It was agreed "that the Court may try this case without a jury." Some other stipulations were made reserving the right to review the decision on the law, and upon evidence submitted to the District Court, but as these can have no effect on the jurisdiction of the Supreme Court either to enlarge or restrict its authority, it is not considered necessary to discuss them.

The Act of March 3rd 1865, if applicable to the case, regulates the powers and duty of the Court.

The finding of the Court was general. There was no special finding as to the facts. The record does not disclose what facts were found by the Court. The Judge found the issues joined in favor of the Claimants, Huckabee and his associates, upon all the evidence submitted to the Court. This general finding "is final and conclusive between the parties."

Miller vs. Life Insurance Company, 12, *Wallace R.* 285.

A bill of exceptions taken at the trial discloses exceptions that were taken by "Brooks."

The name of Judge Brooks does appear in some of the pleadings in the cause, as attorney for the United States *and F. S. Lyon* and his associates. But whether he acted as attorney for one or the other of these parties on this trial and in taking these exceptions does not appear.

The principal question on which C. C. Huckabee was examined was whether the deeds from him and his cotenants to the "Confederate States" for the lands mentioned in the libel, were obtained under duress, or by any illegal and irresistible exercise of power.

"Brooks" took exceptions to the 8th, 10th, 11th, 17th, and 18th questions on the direct examination of said witness. Each of the questions was pertinent to prove facts from which duress in making the deed would appear.

On the cross examination of said witness, "Brooks" took exceptions to the refusal of the Court to allow questions 18 and 20, to be answered by the witness. These questions were not proper on a cross examination, and called for answers that were utterly irrelevant and immaterial. It could have benefited Huckabee nothing to have resorted to a State Court or a Confederate States Court to enjoin the officers of the Confederate army from committing a trespass. The Courts of the United States have never held any man bound as by an estoppel or for a waiver of any right, because he did not resort to such tribunals for relief. The Courts as well as the army and all other departments of the State government were engaged in aiding and fostering the rebellion.

If it was error in the Judge to refuse to consider the evidence in response to any of the questions which he would not allow to be put to the witness, it was error

without injury. There was enough evidence in the record to justify the judgment which the Court gave, and if all the questions put to the witneses had been answered in the most favorable way for the plaintiff, the facts so stated would not have changed the result.

The rule stated in *Barth vs Clise* 12. *Wallace* 400, applies to this case. "The plaintiff in error according to its own showing has not the shadow of a right to recover against" these claimants and "conceding that the Court below erred in all the particulars complained of, the errors have done it no harm." It was the evidence in Barth vs Clise that established that the case was in herently defective and that "the defect was incurable and inevitably fatal." The pleadings were good enough, but *all the evidence was set out in the record*, and so it appeared conclusively that the plaintiff had no right to recover. All the evidence is set out in this record and it appears conclusively that the United States has no cause of action against Huckabee and his associates, and that they have the title to this land as against all the other parties to this proceeding.

The original libel, which was filed 1st October, 1865, alleges a seizure of the property on the same day, by the Marshal of the United States, under an order of seizure issued on the same day by the District Attorney of the United States.

The amended libel which was filed 31st July, 1866, alleges that the property was "Captured by the armed forces of the United States from the late so called Confederate States of America during the late insurrection against the government of the United States, composing the said so called Confederate States, which said property was turned over by said captors to, and seized by the Marshal of this Court, under an order of seizure is-

sued on behalf of the United States, on the first day of October, 1865."

The foregoing are the only allegations of the seizure of this property, found in the proceedings in this cause. In each instance it is alleged that the property was brought within the jurisdiction of the District Court of the United States in consequence of its having been seized by the Marshal under an order of seizure issued by the District Attorney on behalf of the United States.

The jurisdiction of the District Court to render any decree in this cause, is based on the fact that such seizure was made. The record, therefore, furnishes conclusive evidence that on the 1st October, 1865, this property, if seized, was brought *sub judice* in a Court of the United States, and therefore the title and the alleged forfeiture became subjects of litigation to be determined only by the judgment of the Court.

It is not material whether the first seizure was by capture, during the war, by the United States army, or by civil process, since the war, executed by the Marshal of the Court; in both cases the property was turned over to, and seized by the Marshall under an order of seizure isued by the District Attorney, and thereupon it become the subject of judicial action.

The original libel prays "that process in due form of law may issue to enforce the seizure, confiscation and condemnation of the property."

The amended libel contains the same prayer with this addltion, "and requiring notice to be given to all parties concerned in interest to appear and show cause on the return day of said process, why such property should not be decreed to be condemned as property captured during said insurrection, and the right and title thereof vested by the decree of this Honorable Court, in Francis S. Lyon, in accordance with the Special Act of Congress in his favor, for the use of himself and his asso-

ciates." The prayer for *confiscation*, in the original libel, is abandoned in the amended libel, and the prayer for condemnation in the original libel, is changed from such condemnation as the Statutes contemplate, to the condemnation of the land to a particular use, designated in a special Act of Congress.

The reasons for this change are set forth in part in the amended libel, and while the amendment does not disclose the whole truth of the transaction, enough appears in the recitals therein to show that decree sought under its allegations can never be rendered under the confiscation laws of the United States, and to show a total departure from and abandonment of the cause of action set forth in the original libel.

The amended libel sets forth that in 1863 the original owners of these lands sold and conveyed them to the Confederate States, "and the said late so-called Confederate States, by virtue of deeds and conveyances executed by the original owners of said lands, in the years 1863 and 1864, held said lands under color of title, and became the owner thereof," and "while thus owned and used by the said late so-called Confederate States, were *on the day of April*, 1865, captured by the military forces of the United States of America, in the District aforesaid, and the same being so captured by the military forces of the United States, from the so-called Confederate States, the same have been seized by the order of the President of the United States and turned over to the jurisdiction of this honorable Court to be *confiscated* and condemned, according to the Statutes of the United States, in such case made and provided."

This part of the narrative is clear enough, and no law seems to be broken by anything that was done; but the amended libel proceeds to the next step.

"And * * * * * * said lands *were by order of the*

President of the United States, and the Secretary of the Treasury of the United States, *on the 9th January*, 1866, sold to the highest bidder, as property belonging to the United States, and captured as aforesaid from the late so-called Confederate States; and purchased by one Francis S. Lyon, for himself and associates at the price of forty-five thousand dollars, which price was then paid to the United States, and General Swayne, "Assistant Commissioner of refugees, freedmen and abandoned lands," made him a deed on the 3d February, 1866, "for the interest the United States had in said property."

This sale was a violation of law, and a grave invasion of the jurisdiction of the District Court, to whose judgment the President had submitted the question of the condemnation and confiscation of this land. He had turned it over to the Marshal of the Court, and it had been duly libeled, and parties were waiting the first term of the Court to arrive so that they could come in under the monition of the Court and propound their claims to the property.

In La Jeune Eugenie, 2 Mason, on page 462, Judge Story says: "It (the suggestion of the President made to the Court) is understood to be, not a direction to the Court, for that is beyond the reach of Executive authority, but an intimation of the Government, so far as its own rights are concerned, to spare the Court any further investigation." (See also the cases cited in *Exparte McVardle*, 7 *Wallace*, *p* 514, *and United States vs. Klein*, 13, *Wallace* 128.

If the President at any time had authority, of his own mere volition, to condemn, confiscate and sell this land, he waived his authority and lost his power when he caused suit in the name of the United States to be instituted under the Statutes for the condemnation of it.

The amended libel of information puts this matter at rest, however, as follows: "And said attorney further avers and makes known, that said sale and conveyance being deemed by the United States *informal*, the Congress of the United States of America, on the 15th day of December, 1866, and since the libel of information in this case was filed, approved and confirmed the said purchase of said Lyon, and the conveyance made to him by an act passed and approved of the date last aforesaid, entitled, "An act releasing to Francis S. Lyon the interest of the United States in certain lands," which act is as follows: "Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any interest which the United States have in the lands described in a deed executed by Major Swayne, assistant Commissioner of the Bureau of Freedmen and Abandoned Lands, to Francis S. Lyon, bearing date February 3d, 1866, be and the same is hereby released and confirmed to the said Lyon."

The deduction made from these premises in the amended libel is, that said land "*is, under the Statutes aforesaid, liable to condemnation in confirmation of the title of said Francis S. Lyon and his associates.*"

This amended libel, then, is no more than a proceeding to remove a cloud from the asserted title of Mr. Lyon, and in that aspect it would be a defective proceeding, even in a Court of Equity, since it asks a *condemnation* of property to which Mr. Lyon is alleged to have the title, that he may get a title free from dispute.

We think it can not admit of serious question that this amended libel, on the facts stated in it, destroys the case made in the original libel, for confiscation and condemnation of this property, and that this is an attempt to employ highly penal statutes, which provide

summary and extraordinary proceedure for the purpose of securing to a purchaser from the government a judicial confirmation of a title to property in favor of a private citizen.

The extent to which this supposed authority may be used, if once allowed, is exemplified in the letter of the Assistant Attorney General to J. Q. Smith, dated May 31st, 1867, in which he is instructed to dismiss the proceedings in confiscation against this property, "unless Mr. Lyon should prefer that for the purpose of securing and perfecting the title, he should desire them to be continued for his own use and benefit, and in that case the proceedings will be carried on in the name of the United States, at the costs and charges of Mr. Lyon."

The confiscation Statutes are war measures and are supported by the war powers of the government. Neither the right to use these measures or powers can be delegated to individuals for any purpose which concerns only their private interests. The only reason assigned for this order is that the property was sold to Mr. Lyon, by General Swayne, as Superintendent of the Freedmen's Bureau.

After this property was brought into Court no valid sale could be made of it except by order of the Court. In the meaning of these confiscation laws of 1861 and 1862, a decree of condemnation must precede a decree of sale, but if a court, in order to preserve the value of perishable property, or for other sufficient cause, should order a sale pending the decission of the question of condemnation, such an order would not dispose of the rights of either party—except to transfer them from the property to the fund in court.

In advance of a condemnation of the land, even the Court could not decree that the United States should have the land or the proceeds of it. There must be a hearing of the cause before the Court can decide that

the land is condemned. The usurpation, even by the President, of the power to pass the title to lands in advance of a decree of condemnation, if supported, virtually dispenses with all power of the Courts over such cases. The posssession of the *res* is the first essential step in the exercise of jurisdiction. If the President can wrest this power from the Courts, he can exercise the highest power, for there is none higher in such cases than that by which the title to the property is conveyed.

Miller vs United States, 11 *Wallace p.* 294.

This land has never been condemned in any court. The offences alleged against the owners have never been declared as proven in any court. The only thing done that affects the status of the property, is the sale by order of the President, and a release of the interest of the United States in the land by Congress.

In *Tyler vs. Defrees*, 11 *Wallace, p.* 348, the Supreme Court says: "When, therefore, the property is in the course of this proceeding seized by the Marshal, and when with the filing of the libel all that has been done is brought before the court and it adopts and recognizes this seizure, the property is held by him subject to the order of the court, and is under its control, and no second seizure by the same officer can be necessary." This seems conclusive against the power of the President to remove the title to these lands beyond the reach of the jurisdiction of the court by a sale.

This sale and the confirmation of it by Congress, if it amounted to anything, had the effect to deny these claimants a hearing. It was like the ordering the claim and answer of the respondent to be stricken from the files in *Mc Veigh vs. United States* (11 *Wallace.*)

It was pre-judgment by the President, in a case where he assumed judicial powers, and judicial legislation by Congress, in confirming his act.

United States vs. Klein, 13 *Wallace* 128.

The instructions of the Attorney General to the District Attorney imply that he construed this Act of Congress as releasing to Mr. Lyon the right to prosecute this case for his own personal advantage and at his option. If Congress meant this, the Act of December 15, 1866, repealed the confiscation Acts of 1861 and 1862, so far as this property is concerned.

In *Miller vs. The United States*, 11 *Wallace p.* 306, the right of confiscation of the property of rebels is sustained as a belligerent right. "The whole doctrine of confiscation is built upon the foundation, that it is an instrument of coercion."

Same case, p. 305: "Now, what is that right, and why is it allowed? It may be remarked that it has no reference whatever to the personal guilt of the owner of confiscated property, and the act of confiscation is not a proceeding against him." It is not possible that the Congress of the United States intended to transfer the war power, and confiscation as an instrument of coercion, to Mr. Lyon. And yet, if he may pursue confiscable property in the Courts, in his own right, but in the name of the United States, he must do so under a transfer of enough of these governmental powers to enable him to perfect his title to these confiscable lands. What remains in the United States, either in the way of titles to these lands, or in the way of power to resort to them as instruments of coercion, after it has released all its interest in them to Mr. Lyon?

The Supreme Court says, in *Miller vs. the United States Supra.* "The confiscation is not because of crime, but because of the relation of the property to the opposing belligerents, a relation in which it has been brought in consequence of its ownership." If Congress has changed this relationship, by placing the property in the hands of its vendee, can the United

States still proceed against it to confiscate and condemn it?

If the Act of 15th December, 1866, amounts to anything, it must divest the United States, as well as its vendee, of all right to proceed against this land to condemn and confiscate it under the acts of 1861 and 1862. No Court can at this time declare that this property is now, by reason of its ownership, in such relation to the Government of the United States, as that it is liable to be confiscated and condemned, if the title has been transferred to Mr. Lyon.

This is not a proceeding purely *in rem*. It is also a personal proceeding. The offence of the owner is made a ground of confiscation in the original and amended libels. In every aspect of the case the pardoning power extends to the alleged grounds of forfeiture, and this was exercised in favor of the claimants before the Government caused any proceedings to be commenced against this property. The President, through Gen. Swayne, seized that which he had released from all penalties and forfeitures by his previous pardon, granted to the claimants.

We think that for the reasons above stated, it is impossible that any proceeding can now be sustained, at the instance of the United States, to confiscate and condemn this property; and we think it clear, also, that, under the allegations of the original and amended libels, no decree of condemnation or confiscation of these lands could be rendered by any Court in conformity with the acts of August 5th, 1861, and July 17th, 1862, on which alone this libel and amended libel are based.

II. The Judgment of the District Court is in accordance with the evidence in the case.

In the original and amended libels the ownership of the lands is alleged to be in the "Confederate States."

In the argument for the United States presented to the District Court of the United States, it was contended by counsel:

"1st. That the United States were the owners of the property in controversy, having acquired it by capture in war."

"2nd. The United States acquired title by the terms of the capitulation between Generals Taylor and Canby."

"3rd. The United States acquired title by succession to all the property of the Confederate States."

If the United States "*acquired title*" to these lands by any means, it could not afterwards proceed to confiscate them.

This is a proceeding to condemn and confiscate these lands under certain Statutes of the United States, mentioned in the information and libel.

The proceeding is statutory, and for a statutory penalty, incurred by reason of a statutory offence, is highly penal, and is to be strictly construed.

1 *Kent's Commentaries*, 376.

The statutory remedy given for a right created by statute, is exclusive of all other remedies.

Sedgwick on Const. and Stat. Law, pp. 402—5, *and cases cited.*

Dudley vs. Mayhew, 3 *Comstock, p.* 9.

Smith vs. Hackwood, 13, *Barbour* 209.

This proceeding cannot be used for any other purpose than to condemn and confiscate property forfeited to the United States under these Statutes. No decree can be rendered in such proceedings in favor of the libellant upon proof that it had acquired title to the lands; but only on proof that the Government has not acquired the title, but has the right to have the land, owned by an enemy, condemned and sold.

The necessity of inserting the owner's name in the

libel, arises under the act of 1861, from the fact that the property is forfeited by the use the owner makes of it, and under the act of 1862, by the fact that the owner belongs to a certain class of persons, and is engaged in aiding and abetting the rebellion.

It is alleged in the libel that the Confederate States owned the property. The facts which are supposed to establish this ownership are very carefully set forth in the amended libel. If this allegation is not proven, then the cause of forfeiture, as alleged, is not proven. Could the Confederate States acquire title to lands conveyed to it *eo-nominee* by deed?

The power of the Confederate States to acquire title to lands must depend on its being a government, or a body politic, or corporate. Without some such attributes it is not a person or legal entity, within the meaning of the law. No legal authority for its existence can be found. It was the name, merely, of a belligerent, engaged in a war of rebellion, and as such was opposed by law, as well as with arms, throughout the United States.

"It certainly cannot be admitted for a moment, that a statute of the Confederate States * * * * * * could have any legal effect in making the payment of claims valid. The whole Confederate power must be regarded by us as a usurpation of unlawful authority, incapable of passing any valid laws, and certainly incapable of divesting, by an act of its Congress, or an order of one of its Departments, any rights or property of the United States." "The acts of the Confederate Congress can have no force, as law, in divesting or transferring rights, or as authority for any act opposed to the just authority of the Federal Government." *United States vs. Keehler*, 9 *Wallace*, *pp.* 86–7. *Texas vs. White*, 7 *Wallace* 700, (in which a State that existed before and during and since the war, is

denied power, during the war, to dispose of bonds belonging to it, because it was engaged at the time with other States, in rebellion against the Federal Government.) And the doctrines above stated are reaffirmed in the *Legal Tender cases*, 12 *Wallace* 457, and are applied to the decrees of Confederate Courts.

And so it is established, that the "Confederate States of America" could neither acquire or transfer real estate by the acts of its Congress, or by the decrees of its Courts, nor could existing States, while engaged in the rebellion, transfer property held by them before the war.

No government can acquire title to lands, except in accordance with its own laws, and as the "Confederate States" had no valid laws; it was incapable of acquiring titles to lands. As it had no legal existence as a government, or body politic or corporate, it could not accept a deed.

Texas, the same sovereign State and member of the American Union that sold her bonds while dominated by an illegal Government, recovered them back when restored to the control of a legal Government. She was not estopped to claim the bonds, because the sale of them could not be supported by any valid authority in her own laws, or in the laws of the United States.

3. The deed made by C. C. Huckabee and his associates, on the 17th Sept., 186[illegible], passed no title to the Confederate States. There was no grantee in the deed. The consideration was illegal. It was made for an illegal purpose. It conveyed lands and other property for the express purpose of assisting the military operations of the States in rebellion. It was made by persons engaged in rebellion, contrary to the Statutes of the United States, prohibiting conveyances of property by such

persons, and the United States Government, if it had the power, never waived this violation of law, and confirmed the title, nor did it do any act that could be so construed, until after the surrender, and after it had pardoned the grantors in the deed, and after it had proceeded in Court to confiscate and condemn the lands so conveyed, setting up, in its proceeding, the making of such conveyance as the ground of forfeiture.

Therefore the allegations in the libel that these lands belonged to the Confederate States, is not sustained by the proof, and can not be true in law.

Neither is it true on the evidence that, under the law, the title of Huckabee and his associates, was divested out of them by such conveyance, or that they are estopped by their deed from claiming said lands as against the United States.

This conveyance, if voluntarily made, did create a cause of forfeiture of the lands against the grantors in the deed, but it passed no title to the grantee. It rendered the lands confiscable, but did not confiscate them. It created a forfeiture, but not a condemnation. It gave to the United States a sufficient cause to seize the lands, but not to sell them until, in pursuance of its own laws, it had taken the case into Court, and obtained a decree, declaring the forfeiture, and decreeing the confiscation, condemnation and sale.

If the title to this land passed by the deed of September 17th, 1863, from the Claimants to the "Confederate States" it does not follow that the title passed *by capture*, to the United States. The Act of March 12, 1863, "for the collection of abandoned property," &c., contains no provisions in reference to "captured" or abandoned lands. The disposal of "abandoned lands" was provided for in the Act of July 2, 1864, which amended the former Act in this and other particulars; but by this act no provision was made for the sale of

abandoned lands, but only for the lease of them for periods not exceeding twelve months. The second section of the Act of 2nd July, 1864, very clearly shows that lands were not included in the terms "captured or abandoned property" found in the Act of March 3rd, 1863. Nor were lands included in the proviso to the first section of said Act. The language of the 2nd section of the Act of July 2, 1864 is "*in addition to the captured and abandoned property* to be received, and disposed of as provided in said Act, the said agents shall take charge of and lease for periods not exceeding twelve months, *the abandoned lands*," &c., &c.

The term "captured" is not applied to lands in either of said Acts of Congress. The proviso to the first section of the Act of March 3, 1863, only excepts moveable property from the power of the special agents to receive and collect "abandoned or captured property," and so, in the part of the Act conferring the right to receive and collect, as well as in the exception stated in the proviso, lands are not included.

At the time the sale of this land was made by Gen'l. Swayne, to Mr. Lyon, (3d, February, 1866,) there was no statutory provision made by Congress for the disposal of lands captured from the Confederate States, unless the statutes above cited applied to them. If those statutes applied, the lands could not have been sold under their provisions, as they only provided for a lease of them.

If lands conveyed to the Confederate States, "belonged to the hostile organization, or was employed in actual hostilities" and therefore fell under "the description of property" * * * * which "became whenever taken, *ipso facto*, the property of the United States," still there was no law in existence on the 3rd February 1866, which allowed it to be sold by General Swayne. Neither is there any law under which such

lands can be confiscated and condemed. The United States cannot confiscate and condemn its own lands. But we insist that neither under the statutes of the United States nor under the laws regulating "ordinary international wars" does the title to lands which belonged to the opposing belligerent pass, by capture simply, to the victor. It requires more to pass the title to such lands. It requires condemnation and confiscation by judicial authority, or a treaty of cession.

Congress, in dealing with the subject of lands which had been conveyed to the Confederate States, is careful to repudiate the idea that this rebellious organization had capacity to own lands. In the Act of July 16, 1866, which was the first time it attempted to dispose of lands captured, and not condemned by the courts, (13, Statutes at Large, p. 176) it is provided in section 12: "That the Commissioner shall have power to seize, hold, use, lease or sell all buildings and tenements, and any lands appertaining to the same, or otherwise, formerly held under color of title by the late so-called Confederate States, and not heretofore disposed of by the United States," &c., &c.

The words "color of title" in this Act are clearly intended as a denial of the legal existence of the "so called Confederate States," and as a denial that such rebellious beligerent had a capacity to hold an actual title to lands.

Congress has never admitted that the government of the United States acquired tittle lands from or through the Confederate States, either by capture, succession, or treaty. Such an admission necessarily implies that the Confederate States had enough of legal corporate capacity to hold a title to lands; and this fact conceded, it must have had sovereignty, for it did not pretend to to hold lands otherwise than as a sovereign power. It claimed title to lands because it claimed capacity to

hold them. If the "Confederate States" only held "color of title" to lands conveyed to it, would the simple fact of the capture of such lands convert this color of title into an actual title? We believe that a "capture" of lands "in ordinary international wars" has never had that effect.

The proposition comes to this, Huckabee and his associates conveyed "color of title" to the "so-called Confederate States," and the United States, without the aid of a statute converted this color of title into a perfect title, by capturing the land, and thereby Huckabee and associates lost it. This imputes greater potency to a capture than is justified by the laws governing "ordinary international wars."

The United States failed to provide, in the careful system of confiscation laws framed to meet the exigencies of the rebellion, for the acquisition of lands held by the Confederate States, otherwise than by a decree of condemnation and confiscatiou in its Courts. This omission furnishes a very strong reason for the conclusion that it was intended that a mere capture of lands so held should *ipso facto* pass the title to the United States. Ample provision is made in the Statutes for confiscating lands so conveyed, as land thereby forfeited by the owner; and it is also left within reach of the power of the President to restore it to the offending grantor, by extending to him pardon and amnesty. Such was doubtless the purpose of Congress in the enactment of the confiscation laws. These laws contain no concession of right, title, dominion or sovereignty in the "so-called Confederate States.

But this concession must be made when we attempt to apply the laws of war applicable to international conflicts, to a suppressed rebellion, and to deraign a title to lands or immoveables through the simple means of capture. Such title to immovables cannot be sustained unless the con-

quered power owned them, and the conqueror extinguished its title by treaty of peace, or by the entire submission and extinction of the State to which they belonged.

"The property of moveable effects is vested in the enemy from the moment they came into his power." Vattel, Book III, chap. XIII, pp. 196 and 197. But this power must continue until they are carried to a place of safety. This principle of law was, doubtless, in the minds of the Congress when the proviso was inserted in the first section of the Act of March 3, 1863, whereby the treasury agents were prohibited from receiving any moveable property captured by the army and "used or intend to be used for waging or carrying on war against the United States, *such as* arms, ordnance, ships, steamboats, or other water-craft, and the furniture, forage, military, supplies, or munitions of war." This proviso was based on the fact that the capture of such property *ipso facto* passed the title to the government by the laws of war; but Congress, having the right to "make rules concerning captures on land and water" enacted this proviso *as the rule which should define the descriptions of property* that became the property of the United States by capture from rebellious citizens, or rebellious organizations of citizens engaged in war.

Title by capture, can only apply to the public property of the enemy. If that property is immoveable the mere capture does not change the title.

The policy of the United States, in suppressing the rebellion was to sequester and confiscate property of its rebellious citizens, whether held by individuals or by organizations, used in aiding the rebellion. The use of property in aid of the rebellion by the owner, or by others with his consent, and the act of the owner in giving aid and comfort to the rebellion equally

rendered the property of such person liable to forfeiture. If immoveable property was liable to capture by the army and to confiscation by the mere fact of capture because it was forfeited on account of the rebellion of the owner, by far the largest part of the real estate in the South would have been forfeited, and the title transferred to the United States by such capture. Why has Congress never provided the necessary laws to enable some department of the government to dispose of the lands so captured by the army, if it designed any other mode of disposing of them than that provided by law for their confiscation, condemnation and sale, under the decrees of the Federal Courts?

In the Act of 6th of August 1861, the Congress of the United States define "the lawful subjects of prize and capture." These subjects include lands, and subject them to condemnation and sale, whether "captured" or "seized," in the Courts of the United States. In the section under consideration here they plainly refer to property taken on land as well as on water, and the duties prescribed to the President include the taking of this property by civil process as well as by naval or military force and sanction, providing for confiscation and condemnation in Civil Courts without regard to the mode of seizure."

Union Insurance Company vs. United States, 6 *Wall.* 759.

Morris & Johnson vs. United States, 7 *Wall.* 578.

Flemming vs. Page, 9 *How.* 603.

United States vs. Haywood, 2 *Gall.* 485.

The Thomas Gibbons, 8 *Cranch* 421.

Brown vs. The United States, 8 *Cranch* 121.

Jecker vs. Montgomery, 13 *How.* 512.

The whole State of Texas was as much "captured," during the war, and as much "surrendered" at its

close as the lands known as the "Briarfield Iron Works." All the public lands in Texas belonged to the State, and were a part of the resources pledged by Texas to carry on the war of rebellion. It will scarcely be contended that such "capture" or such "surrender," passed the title of these public lands to the United States. And yet Texas remained a sovereign during the war, and during that period could convey its lands to its own people.

Texas vs. White, 7 *Wall.* 741.

Congress in its dealings with "captured" and "abandoned lands" has clearly indicated its purpose not to declare them "lawful subjects of prize and capture," in the sense that these terms apply to captures of moveables from an enemy that are used in military operations.

The policy of Congress was to seize and sequester the property of rebels to incduce them to abandon the rebellion, and to prevent its being used so as to add strength to the military arm of the rebellion.

This was a wise and humane policy, and accorded with the established rule of national law "that lands are never confiscated, but where the income of the estate would otherwise be sent out of the country (or used within it in cases of insurrection) to augment the resources of either private or public wealth of the enemy, it may be sequestered during the pending of the war without any breach of international usage."

Phillimore on International Law, *Vol.* 1, *page* 140, [135.]

Vattel, *Book III*, *Ch. V.* §, 76.

Bynkershoek, *Book* 1, *Ch.* 7.

The Government is bound by this policy, and by this rule of international law.

If any interest in lands passed to the Government by

mere capture, it was only such interest, as under the rule of national law above stated it would have acquired under ordinary warfare.

The Government of the United States has always held itself bound to respect its own laws and constitution, as well as that part of the laws of nations to which it has given its sanction in treaties, in judicial decisions. and in the course of its political administration.

La Jeune Eugenie 2, *Mason p.* 462.

M' Lane vs. United States, 6 *Peters* 404.

Woodruff vs. Trapnall, 10 *How.* (*U. S.*) 207.

Paup vs. Drew, 10 *How.* 222.

Reer side vs. U. S. Dev., 99.

United States vs. Planters Bank, 9 *Wheat* 904.

United States vs. Barker, 12 *Wheat* 559.

The statutes relating to confiscations were intended to be temporary, and ought not to be enlarged by construction or amended, so as to have a new retrospective effect or scope, after the causes that gave rise to them have ceased.

The Irresistible 7. *Wheat.* 551.

The laws of the United States ought not to be so construed, if it can be avoided, as to infract the common principles and usages of nations, on the general doctrines of national law.

Tatnal vs. Seaman 1, *Cranch* 1.

Murray vs. The Charming Betsy, 2 *Cranch* 64-118.

"No sequestration divests the property in the thing sequestered, and. although it prevents the owner from recovering the property while war continues, the mere restoration of peace restores the right to it."

Georgia vs. Brailsford, 3 *Dallas* 1.

Ware vs. Hylton, 3 *Dallas* 199.

Conquest changes the allegiance of the people. This war was waged to restore the people of the Rebel States to their proper allegiance, and to their duty.

Leitesndorfer vs. Webb, 20 *How.* 176.

War itself is not the confiscation of an enemy's property, but simply confers the right of confiscation.

Neither is capture, in conducting a war, a confiscation of property, except of moveables used for military purposes.

The power of confiscation is in the legislature, and to be exerted by the courts, as it is always a judicial question, until the legislature declares its will to enforce confiscation; the courts cannot decree it.

Brown vs. The United States, 8 *Cranch* 121.

Congress, in dealing with insurgent citizens, has defined the confiscations to be enforced, and has left it to the courts alone to decide the liability of the property to be "siezed" or "captured" to forfeiture and confiscation. A General or a Captain has no such power, except as to moveables captured from the enemy in actual hostilities.

"Seizure" of lands, by order of the President, under process in the hands of a marshal, has precisely the same effect as a "capture" by a military organization. Each is done by order of the President, and each is designed by law, and has alone the effect, to bring the property within reach of the exercise of jurisdiction by the Federal Courts. This is all the President can do with such property. The Judiciary must do the rest.

But this deed was not made voluntarily. It was made under such constraint as left the grantors without that freedom of choice and will that is essential in every contract. The compulsion used by the military authority of the Confederate States, was such, and was so directed against the owners of this property, that it amounted to duress.

Every power of the Confederate Government was exerted and supported by military force. Its conscriptions included all the men who were of age to perform labor; and skilled labor could not be obtained, except

through details from the army. No mechanical business, requiring skilled labor, could be conducted without procuring the laborers from the army, and this fact, in most cases, enabled the Government to impose conditions on all who engaged in such business, that they should sell their productions exclusively to the Government, and at rates to be fixed by it. (See the testimony of Wetmore & Robeson.)

The Nitre and Mining Bureau was under the command of Wm. R. Hunt, a Colonel in the Confederate army, and his Department included the Bibb County Iron Works. He had soldiers under his command to enforce his orders. Huckabee testifies (answer 10 to direct interrogatories,) that Hunt required of his company that it should make a contract with the Confederate States to deliver to it all the iron they could produce, at a uniform price. The company refused. They had made an agreement with the Nitre and Mining Bureau to let it have a portion of their iron in consequence of getting details of skilled labor from among their conscripts. Hunt insisted that this was not a contract, such as he wanted, and he demanded that the company should revoke it. "Hunt sent for me to Selma, to which place I went, and he there demanded of me that we should make a contract, and that the agreement we had was not a contract. I consulted with my stockholders, and the result was that we refused to make a contract. I was sent for again by Hunt to come to Selma, and he there stated that inasmuch as we had refused to make a contract, we must do one of three things, or he would impress the Works—we must either contract on Government terms, or lease the Works, or sell them to the Confederate States. I told him rather than make the contract, or lease the Works, we would sell.

11th. Answer—"I know Col. Hunt sent a guard, a

man named Robeson, up to the works, and he objected to the iron being moved. He came there about March, 1863, I believe."

17th. Question—"During that time what disposition was made of the iron produced by your company, and tell why it was so disposed of?"

17th. Answer—"It was used by the Confederate States and this was because they would not allow us to sell it to any other parties."

18th. Answer— * * * * "We owed a large amount of money, and our debts were accumulating. Our debts were about three hundred thousand dollars. We knew if we contracted with the Government we could not pay our debts or get back our capital; this was one of the influences. If we leased it, it was ruinous to the company, and we regarded it best for the company to dispose of the property. Another circumstance that influenced us was that we had been told by Col. Hunt that he would impress the works if one of these three things was not done."

Huckabee's individual lands were sold under like threats of impressment.

Col. Hunt prescribed the alternatives. He was liberal enough to allow three, but his threat of impressment, and his known power to enforce it, amounted to compulsion, which the company could not resist. They must accept one, and being thus compelled, they were not free to act. They preferred to reject all.

A. E. Mott testifies that he was sent to the works as an agent of the Confederate States.

4th. Cross-int.—"There was an agent of the Confederate Government at the works, whose duty it was to watch and prevent the shipment or sale of any iron to any other party than the said Government. * * * * Said agent was required to report any violation of these requirements, and it was believed that force would be resorted to, to enforce compliance therewith. * * * *

* * * There was a threat that the men detailed from the Confederate army who were working for the company, would be sent back to the ranks if the products of the company were not turned over to the Government."

To the 5th cross-interrogatory he says—"From the conversations of the stockholders and their deliberations, I was led to believe that they believed if they did not go on with the production of iron at the prices the Government was paying them, the works would be seized by the Confederate Government; that the Government, in other words, would either compel the company to go on with the delivery of iron at the prices stated, or would "press" them, in case the company should fail to sell them to the Government. * * * * The prices paid by the Goverment of the Confederate States to the Company for their products were such as to cause a loss to the company; they could not afford to make iron at the prices paid them by the Government."

To the 6th cross-interrogatory he says: "The agent of the Government controling the works," after the purchase) "was in the habit of impressing such timber as he desired for the use of the works, having the same assessed under regulations prescribed by the Government, where the owners declined to sell."

John H. Robeson was examined. He was employed as agent of the Nitre and Mining Bureau of the Confederate States from January, 1863, at the Bibb County Iron Works, until the sale of the property in September, 1863.

To third question he answers: "While I was at said place I was not under the orders of any military officer of the United States; but was under the orders of a military officer of the Confederate States, to wit: Lieut. Colonel William R. Hunt, who was commander of the

Nitre and Mining Bureau, of the District of which Alabama was a part. My orders were issued before said iron works changed hands. Said orders were embraced in letters written to me by said Hunt." (He proves the loss of the orders.) "The substance of the orders that I received from Colonel Hunt, and that have been lost, as just stated, as near as I can remember them, were as follows: In the first letter I was directed to forward the iron from the Brierfield Iron Works (the same as the Bibb County Iron Works) as fast as manufactured; and, if necessary, to impress the teams of the iron works, or the teams of any one else, to haul said iron to the depot for shipment to Selma."

"In the seoond letter, or order, I was instructed that if I was opposed by any member of the Company in shipping the iron, to inform him, Col. Hunt, and that he would then direct me to report the names of the employees of the Iron Works to the officers of the Conscript Bureau for conscription."

To the fourth interrogatory he answered:—"Before said property changed hands, I spoke to A. K. Sheppard, their superintendent of the iron works, about the orders I had received from Colonel Hunt, the substance of which I have given above, and I showed him said orders, and intended them as a demand on the company for the iron and the teams of the company with which to haul it. I made the demand on him by authority of the order from Colonel Hunt. When I made said demand, Colonel Sheppard first said, I will run off the drivers, and the teams will be useless to you without the drivers. I then told him I would impress drivers and teams belonging to the farmers in the country around." His remark in reply was "I know too much of Col. Hunt's bull-dog determination to oppose him, when he has taken it into his head to do anything."

To the 6th interrogatory he answered: "They em-

the Confederate authorities on the terms they prescribed.

During all the negociations with the owners, the property was under the guard of a Confederate agent, and the purpose to force them to part wtth the free right to control the property as they chose was plainly and repeatedly stated.

The alternatives presented to the owners to sell, or lease, or work under control at rates fixed by the government all meant the same thing, that the property should only be used for the benefit of the government, and on the terms it should prescribe, and if the owners should refuse all the alternatives, it should be seized, and they should be expelled therefrom.

If compulsion, threatened or exerted towards one's property can amount to such duress as will avoid one's contract in reference to such property, this is a case of such duress.

In all cases where contracts are held void for duress, the question is whether the force used or threatened is of sufficient importance to destroy the freedom of the party who is threatened or forced. The American cases strongly support the doctrine that there is no sound distinction between cases of threat or mischief to property, or to the person, or good name, "because consent is of the essence of the contract, and where there is compulsion there is no consent," and there is compulsion when one's person or property is seriously threatened with mischief, or where "a man's necessities may be so great as not to admit of the ordinary procees of law, to afford him relief."

Collins vs. Wetsbury, 2 *Bay*. 211.

Sospartas vs. Jennings, 1 *Bay*. 470.

A contract procured by threats, or the fear of battery, or the destruction of property, may be avoided on the ground of duress. There is nothing but the

form of a contract in such a case, without the substance. It wants the voluntary assent of the party to be bound by it. And why should the wrong-doer derive an advantage from his tortious act? No good reason can be assigned for upholding such a transaction."

Foshay vs. Ferguson 5, *Hill* (*N. Y*) 158.

Parsons on Contracts, *vol.* 1., *p.* 394-5.

The mode of enforcing seizures and impressments by the Confederate authorities as described in the deposition of Mr. Wetmore, and what is known as the public history of the times, in which this seizure was made, and the evidence of the other witnesses furnish satisfactory evidence that what was done and threatened on the part of the Confederate officers towards this property and its owners, was done in the exercise of irresistible force, and was submitted to by the owners of this property only because they were without power to prevent the intended trespass and wrong.

Whatever aid and comfort may have been given to the rebellion by the owners of this property, in the previous use of this property, or by any other means they possessed, such complicity in the unlawful warfare, would not destroy or affect their right to set up the invalidity of this deed. It was never true, in point of fact, nor in law, that a rebel, though a volunteer, was in all respects, subject to the will of those in authority in the Confederate States. But neither the Confederate States nor the United States could derive a title, by estoppel, to the lands of a rebel, because of his engaging in the rebellion.

The laws of the United States provide for the forfeiture of the property of rebels, and the enforcement of the forfeiture by a judicial procedure to confiscate, condemn, sell and convey the lands of the rebel.

Forfeiture alone does not convey the title, and no

estoppel is recognized in the law. A judicial sentence based on capture in war, or seizure by direction of the President, alone can estop the owner from setting up his title.

The Government of the United States is bound by its own laws in dealing with confiscable property. It is so bound in every case, but especially when it derives its right to have the property of its citizens declared forfeited, and seized, confiscated and condemned, and sold, under the authority of highly penal Statutes.

Paup. vs. Drew, 10 13 *How.* 222.

Reer side vs. The United States, *Dev.* 99.

United States vs. Planters' Bank 9, *Wheaton* 904.

United States vs. Barker 12, *Wheaton* 559.

Woodruff vs. Trapnall 10, *How.* 209, 207.

In the answers and claims of C. C. Huckabee, and others, his associates, it is stated that "these claimants and Washington M. Smith (who was dead when the answer to the amended libel was filed) were fully pardoned by the President of the United States for all crimes connected with their aiding and abetting said insurrection and rebellion, and were fully restored to all the rights of property, except their property in slaves." The same answer is also made to the original libel. In the agreement of counsel, dated May 17, 1869, "It is admitted that the claimants had each obtained, at the times respectively set forth in their respective claims, a pardon in due form from the then President of the United States, and that each of them had accepted the said pardon, and had in all respects complied with the conditions therein expressed, according to law and the regulations in such cases made and provided."

The answer to the original libel sets up that these claimants "received from his Excellency, Andrew Johnson, President of the United States, special pardon and full amnesty for all past offences con-

nected with the late war of rebellion against the United States, and that each of them have fully complied with all the terms and conditions of said special pardons, so that the same have become complete and effectual."

The original libel was filed on the 1st October, 1865, and the property was seized by the Marshal the same day.

Gen'l Swayne sold the property on the 9th January, 1866, to Mr. Lyon, and made him a deed to it on the 3d February, 1866. It thus appears that the pardon and amnesty granted to the claimants by the President was complete and effectual before any attempt was made by the Government to sell these lands. The pardons were granted even before the property was seized by the Marshal.

Whether the title to these lands passed to the United States by capture, or whether the United States only held them under the provisions of the Act of Congress of March 12th, 1873, as abandoned and captured property, the restoration of them to the former owner was within the power of the President, under the Constitution, and also under the the Act of 17th July, 1862. The power to restore captured property to the owner, or former owner, is included in the power given to the President to grant pardon and amnesty" * * * "on such conditions as he may deem expedient for the public welfare."

When the rebellion had been crushed, and all its attending civil and military organizations had been broken up and destroyed, the Government of the United States did not restore them, so as to make them receptacles of titles to property to be held for its use. The Government from that moment, looked only to the condition of its citizens who had engaged in the rebellion, and provided for their restoration to proper relations to it. Pardon and amnesty on proper conditions

was the chief means relied on by Congress to get rid of the differences, strifes, and heart burnings engendered by the war.

If the Constitution had not placed this power in reach of the Executive, the Act of 17th July, 1862, did place it in his power to restore captured property, or abandoned property, or even confiscated property, to the former owner, whose crime and disloyalty were expurgated by the pardon.

If this was not the intention of Congress, there was little or no use for the part of the Statute which gave him discretionary power as to the conditions on which he would grant pardon and amnesty to the offenders. When these pardons were granted the title to these lands was either in Huckabee and his associates, or in the "Confederate States," or in the United States; if in the latter, the President restored it to Huckabee and his associates by his pardon, unless some law of the United States placed it beyond his reach. There was no such law. Congress gave the President the power to include in his pardon and amnesty any condition he might deem "expedient for the public welfare," and this broad and benign authority, suited to the great work of restoring the Government to its proper influence and rightful sway, had a plain and direct reference to the disposal, by the President, of property claimed by rebels, but forfeited to the United States.

United States vs. Klein 13, *Wall.* 128.

Armstrong's Foundry 6, *Wall.* 766.

If Congress, by any legislation subsequent to this grant of pardon, intended to confine its effect to narrower limits than it embraced when it was granted, that legislation has failed of its purpose. But nothing of the kind was intended. The re-lease to Mr. Lyon, in the Act of December, 1866, was at most, a quit claim, and affirmed nothing in respect to the title so conveyed.

The death of Washington W. Smith, one of the claimants, and the results which follow his death, present the point distinctly, that the entire case turns on the facts—1st, whether the title to these lands passed by capture merely to the United States; and 2d, whether the pardon of the President restored them to their former owners. If these lands are not found to be in the first category, then the death of Smith terminates the right to confiscate them. If in the second, the cause of forfeiture is removed, and the right of the United States to condemn or claim them is destroyed.

The Hiawatha 2, *Black* 638

Blackstone's Comm., *book* 2, *page* 431.

Lucas vs. Strother 12, *Peters* 410.

Flemming vs. Page 9, *How.* 603.

Confederate General R. Taylor surrendered a Military Department of the Confederate States to General Canby, of the United States Army, on May 4, 1865. Reference to the terms of capitulation will show that Gen. Taylor only attempted to surrender his troops, and the moveable effects which his army had in charge for military purposes. He did not attempt to make a treaty and to surrender any territory or lands to Gen. Canby, or the Government of the United States. Such a surrender would have been as far beyond General Canby's power to accept, as it was beyond General Taylor's power to make it.

JAS. P. ARMSTRONG, PRINTER—SELMA.